88-1600

No. ——

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY and NEW EDUCATION DEVELOPMENT SYSTEMS, INC.,
Petitioners,

v.

DAVID MOLKO and TRACY LEAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEFFREY S. ROSS
FRIEDMAN, SLOAN & ROSS, P.C.
1 Maritime Plaza
Suite 1040
San Francisco, CA 94111
(415) 788-2200

LAWRENCE A. GIBBS
671 Vincente Street
Berkeley, CA 94707
(415) 528-1078

REX E. LEE *
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

Counsel for Petitioners

March 31, 1989

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether the Free Exercise Clause of the First Amendment precludes petitioners, legitimate religious organizations, from being held liable in tort for their non-violent and non-threatening speech and practices which persuade individuals to convert to petitioners' religious beliefs.

PARTIES TO THE PROCEEDING

All of the parties are listed in the caption.

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v.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioners, Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc. (collectively, the "Unification Church" or "Church") hereby petition for a writ of certiorari to review the judgment of the Supreme Court of the State of California.

OPINIONS BELOW

The opinion of the Supreme Court of the State of California (App., 1) is reported at 762 P.2d 46 (1988). The opinion of the California Court of Appeal, First Appellate District (App., 70) is reported at 179 Cal. App. 3d 450 (1986). The opinion of the Superior Court of the State of California (App., 109) granting summary judgment for petitioners is not reported.

JURISDICTION

The opinion of the California Supreme Court was entered on October 17, 1988. The Church's petition for rehearing was denied on December 1, 1988. On February 16, 1989, Justice O'Connor extended the time for filing a petition for certiorari to and including March 31, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). See *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 482-483 (1975); *Fort Wayne Books, Inc.* v. *Indiana*, Nos. 87-470, 87-614 slip op. at 6 (Feb. 21, 1989) ("Adjudicating the proper scope of First Amendment protections has often been recognized by this Court as a 'federal policy' that merits application of an exception to the general finality rule").

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

U.S. Const. amend. I.

STATEMENT

In this lawsuit, two former members of the Unification Church seek to recover damages for injuries that they claim to have suffered as a result of their conversion to the beliefs of the Church and of their becoming members of the Church. Thus, the allegations in this lawsuit are aimed at a core religious function—proselytizing—and the decision below, by permitting money damages to be recovered based on activities leading to religious conversion, constitutes a revolutionary challenge to the free exercise of religion.

Unificationism is a bona fide religion in the Judeo-Christian tradition.[1] Unification theology emphasizes the individual's personal relationship with God and the importance of concrete and practical manifestations of faith in everyday life. J. Biermans, *The Odyssey of New Religions Today*, 229-235 (Mellen Press, 1988). The Church's evangelical ministry in the United States began when the founder and spiritual leader of the Church, Rev. Sun Myung Moon, came to this country from his native Korea in 1971.

The process of "witnessing"—or sharing of one's faith with non-members of the Church—is a central facet of Unification Church beliefs and practices, as it is of virtually all religious faiths.[2] Respondents' claims in this case, although couched in familiar tort terminology of "fraud" and "emotional distress," are a direct challenge to the practice of "witnessing" or proselytizing in an effort to convert others to the proselytizer's beliefs.

1. On January 21, 1979, respondent Molko, who had recently graduated from law school and passed the Pennsylvania bar examination, arrived in San Francisco "perhaps to find a job or to take the California bar examination." App., 4. In San Francisco, Molko was approached

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[1] It is undisputed that the Unification Church is a bona fide religious faith. *See Colombrito* v. *Kelly*, 764 F.2d 122 (2d Cir. 1985); *Unification Church* v. *INS*, 547 F. Supp. 623, 628 (D.D.C. 1982); *Holy Spirit Ass'n* v. *Tax Comm'n of the City of New York*, 55 N.Y.2d 512 (1982); App., 88, n.14.

[2] The obligation to bring others into the faith is a central tenet of most Christian religions. *See* Mark 16:15 ("And he said to them, 'Go into all the world and preach the gospel to the whole creation' "); Matthew 28: 18-20 ("Go therefore and make disciples of all nations."); see also S. Ahlstrom, *A Religious History of the American People*, 807 (1972). The practice of sharing one's faith through conversion of non-believers is not held exclusively among Christian religions. *See Conversion to Judaism: A History and Analysis* (D. Eichhorn, ed. 1965); *H. Smith, The Religions of the World*, 89 (1958).

by two members of the Unification Church who engaged him in conversation and invited him to join them at their group home for dinner.[3] He accepted that invitation and attended the dinner with approximately 25 other persons, including other invited guests. After dinner, there was a lecture and presentation about "Boonville," a farm that was owned by the group and located a few hours drive from San Francisco. Molko and the other guests were invited to visit the farm. After some consideration, Molko—who was "impressed by th[e] hospitality and enthusiasm"—"finally agreed to go." App., 5.

Molko arrived at Boonville that evening and remained that for about a week. App., 7. During his time at Boonville, all of Molko's physical needs, including food and rest, were well met. The daily routine involved various lectures, discussion groups and prayer meetings which Molko "freely and voluntarily" attended. See Molko Dep. I, 124-145, 165-166. "Molko was at all times free to leave Boonville and knew that buses returning to San Francisco left daily." App., 75-76.[4]

On January 26, Molko accepted an invitation to attend a series of advanced seminars at another location,

[3] Molko stated that he accepted the dinner invitation because he was "curious" and because he was new in town and "looking to meet new people and form an opinion of whether [he] wanted to stay in San Francisco." Molko Dep., Vol. I, 62-63 (hereinafter "Molko Dep. I"). According to respondent Molko, the men told him that they lived in an "international community of some sort." Molko Dep. I, 61. Molko also testified that, out of "curiosity," he asked if the "community" had any "religious connection" to which the men allegedly answered "no." Molko Dep. I, 95. He admitted, however, that he was unsure whether he would have rejected the offer even if he had known that the group was religious in nature. *Id.* at 96.

[4] Molko stated that, although he was initially "bored," he stayed at Boonville because he had met people he would "like to get to know better" and because he appreciated the opportunity to consider what he could do to make his own life, and that of others, more "meaningful." Molko Dep. I, 176-179.

known as Camp K. According to Molko, it was during his stay there that he learned "for the first time" (on his 12th day with the group) that the group was part of the Unification Church.[5] Despite this "revelation" and the fact that Molko "was not physically restrained there and knew he was free to leave," App., 76, Molko chose to remain at Camp K. Several months later, he formally joined the Church. On July 26, 1979, as he was leaving the final session of the California bar examination, Molko was forcibly abducted by "deprogrammers" and taken to a motel where he was held against his will. After three days of involuntary confinement and "deprogramming," Molko renounced his faith in the Unification Church.

The facts relevant to respondent Leal's claims are, in all material respects, the same as those relating to Molko's. In June, 1979, Leal, a student at San Diego State University, was on her way to visit a college in nothern California when she was approached by two members of the Church and invited to dinner. Like Molko, she listened to a lecture about Boonville and she accepted the invitation to go there. App., 9. She later agreed to attend the seminars at Camp K, where she claims to have learned for the first time (on her 22nd day with the group) that the group was part of the Unification Church.[6] Leal chose to remain with the group and sev-

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[5] There is evidence that Molko knew of the group's affiliation from the outset. *See, e.g.*, App., 7, 127; Molko Dep. I, 159-160; Clerk's Transcript on Appeal ("CT"), at 179, 278. However, for purposes of summary judgment, the trial court "resolved these questions in favor of [respondents]." App., 80. Thus, in the present posture of the case, it was assumed that the members of the Church "did not originally disclose that they were affiliated with the Unification Church" or that they affirmatively denied or misrepresented their affiliation. *Id.*

[6] Leal stated that she was aware, from the outset, that the group was Christian in nature and philosophy. Leal Dep. I, 61; Leal Dep. III, 76. However, she alleged that the group misrepre-

eral months later formally became a member of the Unification Church. On October 29, Leal was forcibly abducted from a Los Angeles street by "deprogrammers." Leal, like Molko, was incarcerated for a number of days until she ultimately agreed to renounce her faith.

Neither Molko nor Leal has claimed that anyone associated with the Church ever used actual or threatened physical force or restraint to compel them to remain with the group or to join the Church. See Leal Dep. II, 279. Rather, respondents claimed that the Church used "psychological" manipulation involving sincere affection, positive reinforcement and "guilt" to persuade them to join the Church. This phenomenon—which respondents refer to as "brainwashing," "coercive persuasion" or "thought reform"—is vital to respondents' claims against petitioners.

2. Respondents filed suit against the Church in California Superior Court, alleging claims of fraud, intentional infliction of emotional distress, false imprisonment and restitution.[7] The gist of the fraud claim was that the deception by petitioners' representatives—in both not disclosing their relationship to the Church and in misrepresenting their Church affiliation—caused respondents to be exposed unwittingly to petitioners' proselytizing. Complaint, ¶ 42. Because of petitioners' "brain-washing" or "coercive persuasion," respondents were damaged by being "induced to join the Unification Church." Complaint, ¶ 44-45.

Respondents also alleged that petitioners' "fraudulent inducement into an atmosphere of coercive persuasion . . . [was] extreme and outrageous" conduct which would

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sented their identity to her when, in an early conversation, she inquired if they were "Moonies."

[7] Respondents' complaint alleged several other causes of action "which were abandoned prior to the entry of judgment [in the trial court]." App., 72 n.3.

support a claim of "intentional infliction of emotional distress." Complaint, ¶ 64. Finally, Molko sought restitution for a $6000 donation he had made to the Church several months after he had become a member.[8] The restitutio nclaim arose "directly out of his fraud theory: he assert[ed] that the Church deceived him into unknowingly submitting to coercive persuasion, thereby obtaining undue influence over him which it later used to extract the gift." App., 34.[9]

On petitioners' motion for summary judgment, the superior court held that "even on [respondents'] version of the facts, no viable causes of action could be stated." App., 74 n.4.[10] With respect to the fraud claim, the trial court noted that respondents admitted that they knew the identity of the Church for some time before they suffered the "damage" of being "induced to join the

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[8] Respondents' false imprisonment claim was dismissed below and is not part of this petition. The court of appeals noted that "during the period of his alleged imprisonment, Molko commuted to a bar review course." App., 96. Molko subsequently dropped his false imprisonment claim before it reached the California Supreme Court. App., 34. Leal readily admitted—and the courts below have unanimously found—that she was:

> free to depart at any time; she was not physically restrained, subjected to threats of physical force or subjectively afraid of physical force.

App., 34. Because Leal was never threatened, coerced or physically restrained, summary judgment was granted for petitioners on her false imprisonment claim and that judgment was upheld by the California Supreme Court. *Id.*

[9] The Church filed cross-complaints against the "deprogrammers" and others for violation of the Church's federal and state civil rights (42 U.S.C. § 1985; Cal. Civ. Code, §§ 51.7, 52). App., 2-3. The court of appeal reversed the dismissal of this cross-complaint and that judgment was affirmed by the California Supreme Court.

[10] As the court of appeal correctly noted, the "facts regarding the occurrences giving rise to this lawsuit are essentially undisputed." App., 74.

Unification Church." [11] Accordingly, the trial court held that because respondents had actual knowledge of the facts, they could not have justifiably relied on any initial misstatement or nondisclosure of the group's affiliation. On the claim of intentional infliction of emotional distress, the trial court held that the Church's "conduct was not extreme and outrageous in the sense required to support such a cause of action." App., 129. Finally, on the claim for "restitution," the court found that "Molko's own uncontroverted description of the circumstances under which he made the gift [of $6000] demonstrates that he did so out of a then held religious belief." *Id.* at 98. Accordingly, the court held that the donation was legitimate and that any "misrepresentations" or nondisclosures in his initial contact with the group were cured (or, at least, not relied upon) at the time Molko made the donation.

3. The court of appeal unanimously affirmed the judgment for petitioners. On the fraud claim, the appellate court first affirmed the lower court's "uncontroverted" finding that the respondents knew the truth regarding the alleged misrepresentations "within two to three weeks of their first contact . . . and before joining the Unification Church and engaging in its work . . . ." App., 81. Respondents, however, "endeavor[ed] to avoid the seemingly fatal consequences of these undisputed facts by alleging that during the brief period before the truth was revealed to them, agents of the Church had gained

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[11] The trial court stated:

> [U]nquestionably, when [respondents] learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew that they might have done so. Their actions reflect that it was not their unawareness of defendants' affiliation that caused them to stay.

CT. 988. It is undisputed that respondents were fully aware of the identity of the group within, at most, 12 to 22 days of their initial contact and well before the time they joined the Church. *See supra*, p. 5.

control of their minds [through 'coercive persuasion'] thereby rendering them incapable of resisting the inducements to join the Church . . . ." *Id.* In other words, respondents argued not that they were deceived into joining the Church but rather that they were induced into a situation where they could be "coercively persuaded" to join the Church.

The court held that the respondents' theory of "coercive persuasion," [12] must be rejected on "constitutional grounds" because such a theory would ask the jury to find that "healthy adults were induced to join the Church and to change their life style as a result of 'brainwashing' rather than by religious faith . . . ." *Id.* at 86 (citing *Katz* v. *Superior Court*, 73 Cal.App.3d 952, 987-988 (1977)).[13] "[B]ut, it would not be possible . . . to reach th[at] result without questioning the authenticity and the force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." *Id.* at 89 (citing *United States* v. *Ballard*, 322 U.S. 78, 87 (1944)). Thus, "[i]f liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been 'brainwashed' by the religious organization, and courts would become entangled in determining which former adherents acted out of true faith and which were subject to 'mind control.' " *Id.* at 92.[14]

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[12] Respondents submitted the declarations of Dr. Margaret Singer, a psychologist, and Dr. Samuel Benson, a psychiatrist, in support of their theory of "brainwashing" or "coercive persuasion."

[13] The court noted that the respondents had conceded both "the bona fides of the Unification Church's religious beliefs" and the fact that they, at the time of their conversion, had "sincerely adopted those beliefs." *Id.* at 88.

[14] On the respondents' claim for intentional infliction of emotional distress—based on the use of "coercive persuasion"—the court held that, for the reasons explained in reference to the fraud claim, the theory of "mind control" cannot constitutionally be employed to

With respect to Molko's claim for restitution of his gift of $6000 to the Church, the court held that the claim —like the claim of "fraud"—must be dismissed because the claim turned on the constitutionally impermissible "brainwashing" or "coercive persuasion" theory:

> A former member of a religious organization who, like Molko, made a gift on the basis of religious beliefs he no longer holds cannot challenge the validity of the gift without challenging the validity of his former beliefs. Inquiry into the reasonableness of the beliefs which prompted him to make the contribution is, however, foreclosed by constitutional guarantees of freedom of religion.

Id. at 99. Thus, the court of appeal affirmed the trial court's grant of summary judgment on all counts in favor of petitioners.

4. The California Supreme Court reversed on all three counts. On the fraud claim, the court stated:

> The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion.

Id. at 24. The court stated that the answer to that legal question required weighing the state's interest in preventing fraudulent induction into a setting of "coercive persuasion" "against the severity of the burden imposed on religion." App. 19.[15]

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impose liability upon the Church." App., 93. With respect to respondents' alternative argument that they were injured emotionally by the "threats of . . . divine retribution" against those who left the Church, the court held that such alleged "threats" were "protected by the First Amendment and cannot form the basis for a claim. . . . " *Id.* at 94.

[15] The "initial inquiry" was whether allowing the actions to go forward would "implicate" petitioners' religious *beliefs* or merely

According to the court, the only impact of such claims on the Church was the "burden" on the Church's efforts to recruit new members by means of "coercive persuasion." *Id.* at 23-24. Such a "marginal" (*id.* at 25) burden

> is justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.

Id. at 26-27. Accordingly, the court held that summary judgment was improperly granted and that a jury should be permitted to determine whether "Molko and Leal were, by means of coercive persuasion, rendered unable to respond independently upon learning that they had been deceived . . . ." *Id.* at 28.[16]

The court followed essentially the same reasoning on the other two claims. On the claim of intentional infliction of emotional distress, the court reversed the judg-

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their "religiously motivated *conduct*." *Id.* at 22. The court held that there was no burden on any religious belief because "[t]he challenge here . . . is not the Church's teachings or to the validity of a religious conversion." *Id.* at 24.

[16] The court made no attempt specifically to define the legal or psychological parameters of any theory of "coercive persuasion." Indeed, the court noted that the very existence of the phenomenon referred to as "coercive persuasion" or "brainwashing" is "controversial." Despite this uncertainty, the court stated that the "basic theory" is that:

> brainwashing "is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations."

Id. at 14 (quoting *Peterson* v. *Sorlien*, 299 N.W.2d 123, 126 (Minn.), *cert. denied*, 450 U.S. 1031 (1981).

ment for petitioners, allowing respondents to proceed on the theory that the "fradulent inducement into an atmosphere of coercive persuasion . . . is extreme and outrageous." *Id.* at 32. Finally, the court noted that Molko's restitution claim "is a natural extension of his fraud theory: he contends, in effect, that one of his damages from the fraud was the $6000 loss." *Id.* at 35. Again, the court held that "a triable issue of fact exists as to whether Molko lost his ability to make independent decisions as a result of being deceived into submitting unknowingly to coercive persuasion." *Id.* at 36. Thus, the two claims (for emotional distress and restitution) are derivative of the "fraud" claim.

Justice Anderson dissented. He stated that "the imposition of tort liabilty" for "religious persuasion" "runs counter to established legal precedents and the free exercise clause of the First Amendment" because (1) "the indoctrination achieved by persuasion absent physical force or violence is not unlawful;" and (2) "religious conversion is simply not subject to judicial review." *Id.* at 43.[17]

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[17] On the first point, Justice Anderson cited a number of lower court cases that had held that religious persuasion—even if labelled psychologically "coercive"—is not itself actionable and is otherwise protected by the First Amendment. *Id.* at 47-48. On the second point, he noted that the issue on which the majority had remanded for trial—*i.e.*, whether the conversion (or "brainwashing") was induced by coercive inodctrination or religious persuasion—would inevitably raise questions "so inextricably intertwined with religious faith that they cannot be scrutinized, much less proven without questioning the authenticity of the religious teachings of the Church." *Id.* at 50-54. The dissent then cited decisions of this Court and lower federal courts in support of the proposition that the First Amendment absolutely precluded any inquiry into "the truth or falsity of religious faith." *Id.* at 51. Finally, the dissent held that, even if the coercive persuasion theory were not absolutely barred, imposition of tort liability based on such a theory did not further any narrowly tailored state interest. *Id.* at 57-59.

REASONS FOR GRANTING THE PETITION

The California Supreme Court has decided an issue of fundamental importance to all religious groups in a way that is inconsistent with prior decisions of this Court and with the decisions of several lower federal and state courts. If left undisturbed, this decision will severely curtail the proselytizing and missionary activities of most religious organizations. By exposing petitioners to liability for "coercive persuasion" undertaken to bring new members into the Church, the opinion below has created a new theory of tort liability based entirely on protected religious activity. The petition thus presents an important question which will have widespread effect on religious practice and which therefore requires a definitive resolution by this Court now.

1. In considering the scope and necessary implications of the issues presented in this case, it is helpful to put aside what this case does not involve. First, this case does not involve "a traditional cause of action in fraud." App., 24.[18] Respondents are not complaining about the

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[18] Fraud traditionally exists where there are misstatements or omissions of fact which cause a person to part with money or property of value. *See McNally* v. *United States*, 107 S. Ct. 2875, 2880-2881 (1987); *Hammerschmidt* v. *United States*, 265 U.S. 182, 188 (1924). If respondents sought to recover damages on such a "traditional cause of action in fraud"—*i.e.*, losses directly attributable to their detrimental reliance on a misleading statement—the First Amendment would not be implicated. See *infra*, n.22.

Certainly, petitioners never have suggested that their status as a religious organization grants them immunity from traditional common law torts. Indeed, the issues raised in this petition in no way involve respondents' rights to recover any "damages" they may have suffered during the period of time (12 or 22 days) that they allegedly spent with the Church before they learned of the Church's identity. Such a "traditional" fraud claim was not brought by respondents because the alleged fraud caused no out-of-pocket or other damages to them. *All* of respondents' injuries in this case are alleged to have derived from the fact of *joining the Church*—an act which was freely and knowingly undertaken and not attributable to any fraud. *See supra*, pp. 5-6.

consequences of their reliance on an alleged falsehood or concealment of material fact; they are complaining about the consequences of their conversion to the Unification Church. Respondents' *only* claim, and the *only* basis for their damages, is that they were deceived into a situation in which they could be converted. As the California Supreme Court noted, the only "triable issue of fact" is whether their conversion was a legitimate religious experience or a "brainwashing"—which that court regarded as actionable in tort.[19]

Second, with respect to the "coercive persuasion" (also referred to as "brainwashing" or "thought reform") theory which lies at the heart of this case, this is not a case involving physical restraints, force or threats of force. Although respondents have labelled petitioners' proselytizing efforts "coercive," respondents have never claimed that the "persuasion" at issue resulted from anything other than emotionally compelling speech. *Cf. NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982);

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[19] Respondent Molko's complaint specifies that as a "proximate result" of the fraud, he suffered the "injury" of being "induced to join the Unification Church and work long hours to 'further its purpose . . .'" Complaint, ¶ 15. But, the initial deception—*i.e.*, the alleged failure of the Church members to identify themselves as "Moonies"—did not "cause" the injury complained of because at the time Molko joined the Church, he clearly was aware of the Church's identity. Thus, by definition, Molko could not have been *relying* on the alleged "deception" at the time he was "induced to join" the Church. The theory of "brainwashing" or "coercive persuasion" is the only way for respondents to provide the "causal link" between the "traditional fraud" (the alleged misstatement) and the "damages" (the conversion to the Unification Church).

The claims for recovery for emotional distress and for restitution also are derivative of the Fraud claim in that they seek to recover for specific types of damages that respondents allegedly suffered as a result of their conversion. If the act of religious conversion based on "coercive persuasion" is not actionable, then respondents should not be permitted to recover anything for these other claims.

Parnell v. *Superior Court*, 119 Cal. App. 3d 392, 173 Cal. Rptr. 906 (1981).

Respondents' claims also do not involve minors or mentally incompetent persons. *Cf. United States* v. *Kozminski*, 108 S. Ct. 2751 (1988). Rather, this is a case in which adult former members of a church, who have now repudiated the beliefs of that church, are seeking compensation for the time and donations that they knowingly and willingly provided to the church during the period of their undisputably sincere adherence to the church's religious teachings. That claim rests on acceptance of their argument that the use of non-violent and non-threatening religious proselytizing is wrongful conduct which can give rise to damages ordered by a state court. That issue requires review by this Court.[20]

2. In upholding the claim for damages based on respondents' exposure to "coercive persuasion," the decision below conflicts with the decisions of this Court applying the Free Exercise Clause. The exposure to liability in the circumstances of this case is an unbounded intrusion into petitioners' right to free exercise. Such tort liability is in no way narrowly tailored to serve a compelling state interest; instead, the holding below constitutes a wholly indefensible assault on the core values of religious freedom.

There can be no question that the liability created in this case directly and substantially burdens petitioners'

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[20] Because the legal issue was decided by the courts below on a record which is essentially undisputed (*see* note 5, *supra*) there would be no advantage to this Court in requiring the case to proceed to trial. If petitioners were to prevail before a jury, the decision of the California Supreme Court has had, and will continue to have, an immediate chilling effect on the proselytizing activities of a broad spectrum of religious groups. Moreover, the very fact of having to defend the Church's First Amendment protected conduct in a complicated jury trial imposes irreparable harm to petitioners' Free Exercise rights.

free exercise of religion. The process which respondents characterize, in psychological jargon, as "coercive persuasion" or "the systematic manipulation of social influences" is merely the ability to proselytize and "convert" others to the beliefs and practices of a religion. This goes to the very heart of this or any other Church's religious practice. As the Court has long recognized, the "right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar religious functions." *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978) (plurality opinion). The "spreading of one's religous beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 110 (1943); see *Fowler* v. *Rhode Island*, 345 U.S. 67, 69-70 (1953).[21]

The "conduct" at issue here—non-threatening but successful attempts to persuade respondents to adopt the beliefs and values of the Unification Church—unmistakably involves the most intimate combination of speech, association and religious exercise. Thus, the State's decision to award tort damages based upon the successful "conversion" of respondents to the Unification Church's beliefs is the type of infringement of petitioners' fundamental rights that triggers heightened judicial scrutiny under the First Amendment. *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982); *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Hustler Magazine* v. *Falwell*, 108 S. Ct. 876 (1988). Accordingly, the theory of the case below which posits liability based on "coercive presuasion," can be sustained only if the imposition of liability

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[21] The decision below, in effect, renders a certain "religious practice [*i.e.*, proselyting] illegal" and is accordingly, subject to the strictest judicial scrutiny. *Braunfeld* v. *Brown*, 366 U.S. 599, 606 (1961).

can be shown to be "the least restrictive means of achieving some compelling state interest." *Thomas* v. *Review Board of the Indiana Employment Sec. Div.*, 450 U.S. 707, 717-718 (1981); *see Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963) ("[o]nly the gravest abuses, endangering paramount inteersts, give occasion for permissible limitation" of free exercise rights) (quoting *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945)); *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion").

The court below articulated three state interests which it believed to be sufficiently compelling to justify the conceded burden on petitioners' religion: (1) an interest in preventing "fraudulent conduct"; (2) an interest in "protecting families from suffering" from the "stress" which occurs when a family member joins a "cult" "as a result of fraud and deception"; and (3) an interest in "preventing" exposure of individuals to "coercive influence." App., 25-27. None of these interests in the context of this case can be deemed compelling. Yet, assuming *arguendo* that one could hold that the interests are compelling, the most cursory analysis shows that the creation of the new tort liability at issue is not "narrowly tailored" to further such interests.

The only real state interest implicated by the California Supreme Court's novel tort theory [22]—the interest

[22] The first articulated state interest, in protecting against "fraudulent conduct," already is served by existing tort actions for fraud. *See Yoder*, 406 U.S. at 215, 235 (rejecting state interest because interest "otherwise served"). If respondents have suffered any damage as a result of detrimental reliance on petitioners' "fraudulent conduct," *i.e.*, misstatements or omissions made at the outset of the relationship, then the state's interest is fully vindicated by the existing common law tort of fraud which permits recovery of all pecuniary losses suffered in detrimental reliance upon those stateemnts. *See supra*, n.18. But, the state's interest in

in preventing "brainwashing" or "coercive persuasion"—is not a legitimate, let alone compelling, state interest. Despite the psychological label, "coercive persuasion" is merely a euphemism for "speech" and related religious activity. In this case, it is speech about vitally important public and private issues (*cf. First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 776 (1978)) and it is speech designed to encourage association for the purposes of promoting the religious beliefs of the speaker. *Cf. NAACP* v. *Claiborne Hardware*, 458 U.S. 886 (1982). No one has ever suggested that "coercive persuasion" involves any conduct that is itself unlawful or tortious (unless, as the court below found, the *persuasion* itself is tortious). Nor has anyone suggested that the "speech" in question, *i.e.*, the "witnessing" or proselyting of the Unification Church members, is "outside" the protections of the First Amendment. See *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Miller* v. *California*, 413 U.S. 15 (1973); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969).

Indeed, the conduct challenged here should—by definition—enjoy double constitutional protection. "Persuasion" is speech, and religious persuasion is speech plus the free

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deterring fraud provides no compelling reason to *expand* the existing tort into a remedy for religious conversion by "coercive persuasion."

The second articulated interest merely invokes the states' concern for protecting the family of the person who may be defrauded. This interest is merely a component of the other two interests and it adds nothing to them. The family suffers no independent injury from a fraud perpetuated upon an individual member of the family. Nor does the family have a distinct interest in protecting an adult member from being converted to a religion if the adult member has no basis to complain. Thus, if the Constitution does not permit a court to interfere with the conversion process on behalf of the individual, then it clearly does not permit the state to step in to protect family members who oppose the individual's conversion.

exercise of religion. Labelling either of these as "coercive" adds nothing to the analysis because coercive persuasion is nothing more than successful persuasion. It is clear that if respondents had never been converted, the petitioners' efforts at "persuasion" would not have been deemed tortious under the California Supreme Court's decision. Thus, petitioners' efforts at religious persuasion were held to be actionable only because they were successful.

At bottom, "brainwashing" or "coercive persuasion" is —at most—a theoretical explanation for why certain speech can be persuasive. See *infra* n.33 & pp. 23-25. But, this Court has specifically stated that "[s]peech does not lose its protected character . . . simply because it may embarrass others or coerce them into action." *Claiborne Hardware*, 458 U.S. at 910. The state's asserted interest in protecting its citizens from "overly persuasive" religious speech and conduct designed solely to convert someone to a new religious faith clearly cannot constitute a compelling state interest. Otherwise, the state court will be given the authority to decide for itself what religious conversion experiences are appropriate and which involve an abuse which can be severely curtailed or perhaps even absolutely prohibited.

Absent physical violence or other tortious conduct, the state cannot leave unorthodox religious organizations to the not-so-tender mercies of a jury to decide whether statements made by church representatives to persuade new members to join the church are acceptable. It is difficult to imagine a more direct or frightening challenge to the concept of the free exercise of religion. In sum, there is no state interest sufficient to support the extraordinary expansion of state tort law adopted by the California Supreme Court. See *Paul* v. *Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875, 883 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 289 (1987); *cf. Wisconsin* v. *Yoder*, 406 U.S. at 221 (1972) (reviewing court

must "searchingly examine the interests that the State seeks to promote. . . .")[23]

3. The decision below also is inconsistent with the decisions of this Court, and other courts, which have held that the truth or validity of religious beliefs cannot be scrutinized in the courts. In *United States* v. *Ballard*, 322 U.S. 78 (1944), for example, the government had brought a mail fraud prosecution against members of the "I Am" religious movement charging that the movement had solicited funds and membership "by means of false and fraudulent representations." *Id.* at 79. This Court held that, whatever the basis for such a prosecution, the court and jury were not free to inquire into the validity of the defendants' religious beliefs. In a frequently cited passage, this Court observed:

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs . . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained *false representations*. . . . When the triers of fact undertake that task, they enter a forbidden domain . . . .

Ballard, 322 U.S. at 87; *see also Watson* v. *Jones*, 80 U.S. (13 Wall) 679, 728 (1871) ("[t]he law knows no heresy") (emphasis added); *Presbyterian Church* v. *Mary*

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[23] As the court below correctly noted, respondent Molko's "separate" claim for restitution is merely an "extension of his fraud theory; he contends, in effect, that one of his damages from the fraud was the $6000 loss." App., 35. Thus, to the extent the First Amendment stands as a barrier to the fraud claim, it also precludes recovery on the "restitution" cause of action. Similarly, if the respondents are not permitted to recover in a common law fraud claim based on defendants' alleged conduct in "inducing" them into an atmosphere of "coercive persuasion," they also should not be permitted to recover damages for "emotional distress" based on the same conduct.

Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) (courts cannot resolve disputes that necessarily require them to weigh the significance and meaning of religious doctrines).

Several lower federal courts and state courts have refused to allow tort claims against religions based on theories of "coercive persuasion" or "brainwashing" on the ground that, under *Ballard*, "indoctrination and initiation procedures and conditions of membership in a religious organization are generally not subject to judicial review." *Lewis* v. *Holy Spirit Ass'n*, 589 F. Supp. 10, 12 (D. Mass. 1983) (citing *Ballard* and dismissing tort claims based on "coercive persuasion" to Unification Church beliefs); *Meroni* v. *Holy Spirit Ass'n*, 506 N.Y.S.2d 174, 178 (N.Y. App. Div. 1986) (dismissing tort claims against Uni,fication Church based on claims of "brainwashing" "practices designed to persuade [plaintiff] to adopt the church's religious beliefs").[24]

The "coercive persuasion" theory conflicts with *Ballard*, and the decisions of those lower courts which have faithfully applied it, because it suggests to the jury that no one would freely choose to adopt the belief system of the petitioners. In other words, the theory of coercive persuasion—which is itself a subjective explanation of respondents' conduct—contains an implicit value judgment

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[24] *See also In re Pollin*, 675 P.2d 1013 (Okla. 1983) (reversing order imposing guardianship for young woman who had allegedly been "brainwashed" by religious organization on grounds that such application of guardianship law "invades the area of personal ideas, thoughts and beliefs"); *Founding Church of Scientology* v. *United States*, 409 F.2d 1146, 1162 (D.C. Cir. 1969) (reversing jury verdict that religious practices and literature were accompanied by "false or misleading labelling", holding such an inquiry impermissible under *Ballard* because "a finding that the seized literature misrepresents the benefits [of the religious practice] is a finding that [the] religious doctrines are false"). *Id.* at 1156.

regarding the Church's beliefs.[25] As the trial court explained:

> both [experts] rest their opinions in large part upon the view that [petitioners'] recruitment techniques involve "systematic manipulation of social influences" which . . . lead [respondents] to make choices they would not have made in the "free exercise of [their] own will and intellect." But these are not statements which are either true or false; they are veiled value judgments concerning the entire outlook of the Unification Church.

App., 125; see App., 137-143 (declarations of respondents' expert witnesses).[26]

Moreover, as the court of appeal noted, a court cannot accept the theory of "brainwashing" or "coercive persuasion" as an explanation for respondents' conversion "without questioning the authenticity and force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." App., at 89. This Court should grant certiorari to resolve the conflict on this important and recurring issue of religious freedom.

4. By permitting respondents to proceed to trial on their claims to recover damages allegedly suffered as a result of religious conversion, the decision seriously threatens the day-to-day activities of virtually all re-

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[25] *See* Robbins, *"Uncivil" Religions*, 61 Thought 277, 280 (1986) (coercive persuasion theories "frequently entail sinister clinical interpretations of behaviors and processes which might otherwise be seen merely as indicative of intense religious commitment"); Balch, *What's Wrong with the Study of New Religions*, Scientific Research and New Religions, 25 (B. Kilbourne, ed. 1985).

[26] According to the trial court, respondents' experts essentially "reasoned backwards" from their disapproval of the Unification Church (and its beliefs and methods) "to the conclusion that [respondents] were not thinking freely because they were persuaded by them." App., *infra*, 125, n.5.

ligions. Obviously, the burden of tort litigation brought by disillusioned former members falls most heavily on minority, or "new" religions. Those religions are as entitled to First Amendment protections as any other and certainly need them more. But, there is no question that the theories of ilability for "coercive persuasion" announced by the California Supreme Court can—and almost certainly will—be used in litigation against mainstead religions. The theory of "coercive persuasion" or "thought reform," as it is articulated in the decisions below is so broad and so vague that it can reach literally any religious organization.

Indeed, the "brainwashing" or "coercive persuasion" theory is cutting a wide and dangerous swath through the common law. One of the experts who has submitted a declaration in support of the respondents in this case, Dr. Margaret Singer, has offered identical testimony in myriad law suits across the country. For example, Dr. Singer has presented her unique psychological theories in tort litigation involving instruction in Transcendental Meditation,[27] "est" seminars[28] and Lifespring five-day "personal development" programs.[29] She even has offered her testimony regarding "systematic manipulation of psychological and social influence techniques" in routine

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[27] *Kropinski* v. *World Plan Executive Council*, 853 F.2d 948 (D.C. Cir. 1988). In the trial of that case, Dr. Singer testified that "the thought reform program had its impact on [plaintiff] in that it caused him to change his world view." *Kropinski* v. *World Plan Executive Council*, No. 85-2848 (D.D.C. 1986), Transcript of Trial (12/11/86) at 121. On appeal, a panel of the District of Columbia Circuit questioned whether such testimony met the standards of "scientific acceptability" but did "not address defendants' argument that plaintiff's theory of thought reform would burden their First Amendment rights." 853 F.2d at 957.

[28] *Slee* v. *Werner Erhard*, No. N-84-497-JAC (D. Conn.).

[29] *Miller* v. *Lifespring Inc.*, Civ. No. 8678590 (Cal. App. Dep't Super. Ct.).

commercial litigation. In opposition to a motion for summary judgment by Snap-On Tools Corporation in franchise litigation, Dr. Singer submitted an affidavit that stated:

> it is my opinion that Snap-On Tools Corporation employs techniques of psychological manpulation to influence the actions of its dealers . . . Normal individuals subjected to coordinated programs of coercive influence and psychological manipulation can be psychologically managed and dominated without knowing they have been manipulated.

Declaration of Margaret Singer, at 2 (June 24, 1988) (in *Lowder* v. *Snap-On Tools Corp.*, No. 615484 (Cal. App. Dept. Super. Ct.).[30]

The theory of "coercive persuasion" completely undermines the concept of free will inherent in all common law civil and criminal law doctrines.[31] The theory allows litigants (1) to create an "intermediate" state-of-mind exception in which the "victim" is neither incapacitated nor responsible for his own actions; and (2) to attribute

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[30] In the recent criminal prosecution of an admitted "deprogrammer" for the kidnapping and week-long captivity of a Denver Unification Church member, *People* v. *Whelan*, No. 87CR2056 (Denv. Dist. Ct. Nov. 4, 1988), Dr. Singer testified in support of the defense's contention that the forcible kidnapping was necessary—as the "lesser of two" evils—in light of the Church's use of "thought reform" to convert the victim. In accordance with that testimony, the trial judge—over First Amendment objection—agreed to provide the jury with the requested "choice of evil" or necessity defense and the kidnappers were acquitted. *See People* v. *Whelan*, Transcript (Sept. 22, 1988) at 4-11; *see also Kidnap Trial Fosuses on Church Teachings*, Rocky Mountain News, Oct, 22, 1988 at 3; *"Evils" Defense Allowed; Landmark Ruling in "Moonie" Case*, Denver Post, September 23, 1988; *Moonie Verdict Denounced as Threat to Religious Rights*, Denver Post, Nov. 6, 1988, at 1-B.

[31] *See, e.g.*, Calamari & Perillo, *Contracts*, §§ 121-135 (1970) (explaining limited exceptions, such as infancy, insanity and duress, to usual presumption of capacity to contract).

the otherwise indisputably "voluntary" conduct of the victim to "coercive persuasion" and thereby expand liability or escape a defense to liability.

At bottom, however, the most dangerous aspects of this "new" theory of liability is the fact that it constitutes a direct assault on the heart of First Amendment protected activity. All organizations that have a strong system of beliefs and that forcefully advocate and inculcate that belief system can be readily found to engage in "brainwashing" under the definition accepted by the court below.[32] This means that religious, self-help groups, law schools[33] and political and social advocacy groups may be threatened with the imposition of liability based on their non-violent and non-threatening persuasion and advocacy. And, if the prevention of psychologically coercive speech and practices can constitute a "compelling state interest," which permits a jury to approve or disapprove the advocacy at issue and impose damages, then the harm to fundamental constitutional values that this theory permits is virtually limitless.

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[32] Dr. Singer has described the "special circumstances and conditions" in which "brainwashing" or "coercive persuasion" occurs. App., 149. According to Dr. Singer, an organization will

1. get "control over the person's social and/or physical surroundings";
2. get "control over the person's time";
3. manipulate "rewards, punishments and experiences" to "elicit" or inhibit certain behavior in the person;
4. keep the person "unaware" of the manipulation; and
5. adopt an "authoritarian" organizational structure so that there can be no effective criticism of the organization.

App., 149-150. Obviously, this "definition" of coercive persuasion is so broad—and potentially covers so many religious, political, social, educational and military organizations—as to be virtually meaningless.

[33] *See* Halpern. *On the Politics and Pathology of Legal Education*, 32 J. of Legal Ed. 383 (Sept. 1982).

There is no doctrinally defensible distinction between speech which succeeds in persuading mature adults to change religions and that which succeeds in persuading them to change political parties. Both may be controversial and disruptive to family and other existing relationships, but both are solidly protected by the First Amendment. The only conceivable difference is that political persuasion is covered by one of the First Amendment's specific guarantees, where the successful religious persuasion is covered by two.

Accordingly, the court should grant the petition and resolve the conflict in judicial authority concerning the proper balance to be struck between the First Amendment's protection of religious proselytizing and conversion and the state's interest, if any, in protecting its citizens from psychologically "coercive" speech and religious practices.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JEFFREY S. ROSS
FRIEDMAN, SLOAN & ROSS, P.C.
1 Maritime Plaza
Suite 1040
San Francisco, CA 94111
(415) 788-2200

LAWRENCE A. GIBBS
671 Vincente Street
Berkeley, CA 94707
(415) 528-1078

REX E. LEE *
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

Counsel for Petitioners

March 31, 1989

* Counsel of Record

88-1600

No. ———

MAR 31 1989
JOSEPH F. SPANIOL, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,

v.

DAVID MOLKO, *et al.*,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

REX E. LEE *
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-4000

JEFFREY S. ROSS
FRIEDMAN, SLOAN & ROSS, P.C.
1 Maritime Plaza
Suite 1040
San Francisco, CA 94111
(415) 788-2200

LAWRENCE A. GIBBS
671 Vincente Street
Berkeley, CA 94707
(415) 528-1078

Counsel for Petitioners

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

S.F. 25038

Ct.App. A025338
Super.Ct. No. 769-529

Ct.App. A020935
Super.Ct. No. 769-529

DAVID MOLKO,
Plaintiff, Cross-Defendant and Appellant;

TRACY LEAL,
Plaintiff and Appellant,

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY *et al.*,
Defendants, Cross-Complainants, and Appellants;

NEIL MAXWELL,
Cross-Defendant and Respondent.

[Filed Oct. 17, 1988]

This case raises three issues: (1) whether, consistently with the free exercise clause of the First Amendment of the United States Constitution and of article I, section 4, of the California Constitution, former members of a religious organization may sue that organization on various causes of action arising out of its allegedly deceptive recruitment practices; (2) whether the organization may cross-complain against a former member and others for allegedly violating its civil rights under federal and state statutes; and (3) whether California's equitable indemnity doctrine permits an intentional tortfeasor to obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis.

Appellants David Molko and Tracy Leal are former members of the Unification Church.[1] While members of the Church, they were on separate occasions forcibly abducted from a public street by third parties and "deprogrammed"—i.e., persuaded to relinquish their belief in and association with the Church. Thereafter Molko and Leal filed the present action against the Church, alleging they had been fraudulently induced to joint the Church through a variety of deceptive tactics on the part of some of its members. Molko and Leal each asserted causes of action for fraud and deceit, intentional infliction of emotional distress, and false imprisonment. Molko also sought restitution of a $6,000 gift he alleged the Church obtained from him by undue influence.

The Church filed a first amended cross-complaint against Molko and Neil Maxwell,[2] alleging their depro-

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[1] We use the names "Unification Church" and "the Church" to refer collectively to the Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc. While the two organizations are apparently separate entities, we need not differentiate between them for purposes of this opinion.

[2] The cross-complaint also named Joseph Alexander, Sr., Stanley F. Leal, Virginia Mabry, and Judy Powell as cross-defendants. Those parties are not involved in the present appeal.

gramming activities violated the Church's federal and state civil rights.[3] (42 U.S.C. § 1985, subd. (3); Civ. Code, §§ 51.7, 52.) The Church also sued Maxwell for full or partial indemnity, on the theory that Maxwell, by kidnapping and deprogramming Molko, had wholly or partially caused any damages for which the Church might be found liable to Molko.

The court granted summary judgment for the Church in the action brought by Molko and Leal, and entered a judgment of dismissal for Molko after sustaining his demurrer without leave to amend as to the Church's amended cross-complaint against him. Similarly, the court entered a judgment of dismissal for Maxwell and the other cross-defendants after sustaining their demurrers without leave to amend as to the Church's amended cross-complaint against them.

Molko and Leal appealed from the summary judgment for the Church. The Church cross-appealed from the judgment of dismissal for Molko, and appealed from the judgment of dismissal for Maxwell and Alexander.[4] The Court of Appeal consolidated all the appeals; it affirmed the summary judgment for the Church, but reversed the judgments of dismissal for Molko, Maxwell, and Alexander. We granted petitions by Molko and Leal to review the affirmance of summary judgment for the Church, and by Maxwell to review the reversal of his judgment of dismissal.[5]

---

[3] The Church alleged that Molko, after his own deprogramming, became involved in kidnapping and deprogramming other Church members.

[4] The Church did not appeal from the judgments of dismissal for cross-defendants Stanley F. Leal, Virginia Mabry, or Judy Powell.

[5] Neither Molko nor Alexander sought review of the reversals of their judgments of dismissal.

As will appear, we conclude that (1) the summary judgment for the Church should be affirmed as to the cause of action for false imprisonment but reversed as to the causes of action for fraud, intentional infliction of emotional distress, and restitution, and (2) the reversal of the judgment of dismissal for Maxwell should be affirmed.

I. FACTS

A. *Facts as to David Molko* [6]

In June 1978 27-year-old David Molko graduated from Temple University School of Law. A month later he took and passed the Pennsylvania bar examination. In spite of these educational successes, he was unsure about his future. He considered moving to California, and decided to visit San Francisco, perhaps to find a job or take the California bar examination. He arrived in San Francisco in early January 1979.

On Sunday, January 21, Mark Bush and Ernest Patton approached Molko as he waited at a bus stop in San Francisco. Bush and Patton told Molko they lived in an "international community" of socially conscious people from different occupations who met in the evenings to discuss important issues. They invited Molko to come to dinner that evening. Molko asked the two their occupations and was told they did social work and worked with environmental programs. He asked if Bush and Patton had a "religious connection." They said "no." Bush and Patton did not reveal to Molko that they were members of the Unification Church, or that their purpose in ap-

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[6] Molko, Leal, and the Church have stipulated that the deposition testimony of Tracy Leal, David Molko, Stanley F. Leal, Collette Zeilinski, and Ernest Gibbs Patton, Jr.—which was extensively quoted in the papers supporting and opposing the Church's motion for summary judgment—be included in the clerk's transcript on appeal. Accordingly, we take judicial notice of the deposition transcripts and consider them part of the record for purposes of this appeal. (Evid. Code, § 452, subd. (d).)

proaching him and inviting him to dinner was to recruit him into the Church.

Molko attended the dinner, at which there appeared to be a number of other invited guests. He was kept apart from the other guests, and during dinner was held in constant conversation with group members. After dinner there was a lecture on general social problems, followed by a slide show on "Boonville"—a "farm" a few hours to the north, owned by the group at the house. The slide show depicted Boonville as a rural getaway where people from the house went for relaxation and pleasure. When the presentation was concluded, all the dinner guests were invited to visit the farm. Bush, Patton, and another group member, David Hager, strongly urged Molko to accept the invitation, and told him a van would be leaving for Boonville in a few minutes. Molko said he had no personal belongings with him, and he preferred to think about it. The group members assured him they would provide for all his needs, and again urged him to go. Impressed by this hospitality and enthusiasm, Molko finally agreed to go. At their reqeust he then filled out and signed a form declaring his name, address, and telephone number,[7] and 15 minutes later was in a van on his way to Boonville. He did not know and was not told Boonville was an indoctrination facility for the Unification Church.

The van arrived at Boonville several hours later. Molko was given a sleeping bag and shown to a shelter where others were already sleeping. He quickly fell asleep, and awoke the next morning to discover that

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[7] The Church claims the form identified the program at Boonville as being associated with the Unification Church. Molko claims it did not. The Court of Appeals acknowledged this created a factual dispute, but deemed the dispute immaterial because of the conclusions the court reached in holding the Church was entitled to summary judgment. Because we reach different conclusions, we do not, as will be seen, find the dispute immaterial.

many more people than just the 12 from the van were sleeping in the large room. When he arose and walked to the bathroom, a group member arose and walked with him. Wherever he went, a group member accompanied him.

Molko expected to spend some relaxed time in the country, but soon learned the day's schedule was tightly planned and left him no time to himself. First came group calisthenics, then breakfast, then a lecture on moral and ethical issues, followed by small group discussions of the lecture. Next came lunch, more exercise, another lecture and discussion, then a break to take a shower. Finally came dinner, "testimonials" by individuals about their lives and their impressions of the day at Boonville, and group singing followed by yet another group discussion. At the end of the day Molko was exhausted and quickly fell asleep.

Tuesday was a repeat of Monday, except that Milko became acquainted with group member Bethie Rubenstein. He asked her the name of the group, and she told him it was the "Creative Community Project." He asked if the group was associated with any religious organization, and she told him "no." By the end of Tuesday, Molko was tired, uncomfortable and concerned about the direction his life was taking. He informed Patton and Bush he desired to return to San Francisco. They told him he was free to leave and that a bus would depart at three o'clock in the morning, but they strongly urged him to stay and hear the important information that would be discussed in the days to come. Molko agreed to stay on a little longer.

Wednesday and Thursday were exactly like Monday and Tuesday—even the two-day cycle of lectures was repeated verbatim. The lecturers spoke of brotherly love and social problems, and included references to God and some amount of prayer. On Wednesday, Rubenstein in-

formed Molko the group's teachings derived from many philosophical sources, including Aristotle, Jefferson, and Reverend Sun Myung Moon. She did not disclose that Reverend Moon was the group's spiritual leader.

On Friday night, Molko was told the group was about to leave Boonville for "Camp K"—another group-owned retreat used on weekends. Molko said he wanted to return to San Francisco, but again was urged to give the group a few more days. He agreed and made the trip to Camp K, still oblivious of his involvement with the Unification Church.

The exercise-lecture-discussion regimen continued throughout both the weekend at Camp K and the following week back at Boonville, during which Molko became increasingly disoriented and despairing of his future. On Friday—his twelfth day of continuous group activity—Molko once again asked if the group was involved with any larger organization. Finally, a member named Gloria revealed to him for the first time that the group was part of the Unification Church. He was confused and angry, but was informed the deception was necessary because people who had heard negative stories about the Church tended to be unreceptive if they knew the group's identity before hearing what it had to say. He agreed to stay and try to work out his confusion.

That might be returned to Camp K, where he remained for approximately five to seven weeks of "advanced training." The same regimen and structure continued during this period. Molko's parents, concerned about his welfare, flew from Florida in late February to talk to him. They stayed a week, but saw their son for only a few hours, and only in the presence of church members. The parents urged him to come home briefly, but he refused. Molko—who by this time had been taught that his parents were agents of Satan trying to tempt him away from the Church—was confused by the visit, but

remained with the Church. His parents returned to Florida.

On finishing his advanced training at Camp K, Molko was judged ready to go back to the city to sell flowers and "witness"[8] for the Church. Shortly thereafter, in early April, two Church leaders told Molko the Church desparately needed funds for taxes, and urged him to give money. He donated $6,000 to the Church. Sometime during this period he also became a formal Church member.

Church leaders advised Molko he could help the Church most by becoming a member of the bar, and promised that the Church would pay for his bar review course. He agreed, and studied for and took the California bar examination while living in the Church's San Francisco house. As he left the final session of the bar examination, however, Molko was abducted and taken to a motel by "deprogrammers" hired by his parents. After three days of deprogramming, Molko terminated his association with the Unification Church.

B. *Facts as to Tracy Leal*

In June 1979 19-year-old Tracy Leal completed her freshman year at San Diego State University. She had found the college large and impersonal; she considered transferring to Humboldt State University in northern California, but desired to visit the school before applying for admission. To that end she bought a bus ticket to Humboldt and set out on Sunday, June 7. The trip required changing busses in San Francisco.

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[8] "Witnessing" is the Unification Church's name for the process of recruiting new members on the street. Bush and Patton, for example, were witnessing when they persuaded Molko to come to dinner.

Open and candid witnessing is employed by other religious denominations.

While waiting for her bus in San Francisco, Leal was approached by Unification Church member Collette Zielinski, who was witnessing for the Church. Zielinski told Leal she was waiting for a friend arriving from Switzerland. Leal remarked that she loved to ski and had always wanted to go to Switzerland. Zielinski said her friend was also a skier and perhaps Leal would like to talk to her. Church member Bradford Parker then arrived, and Zielinski and Parker told Leal about the house in which they lived. They said they were part of the "Creative Community Project," described as a group of socially concerned professional people involved in good works such as giving food to the poor. They invited Leal to have lunch and go sightseeing with them, then join them for dinner at the house. They assured Leal she could catch another bus to Humboldt later that evening. Leal asked if Zielinski and Parker were part of a religious group, and said she did not want to get involved with them if they were. They replied only that the people in their group "all came from different religious backgrounds." Leal accepted their invitation.

That evening Leal went to the group's house for dinner. Like David Molko, she was kept apart from other dinner guests and was held in constant conversation with Church members. She heard the same lecture, saw the slide show on Boonville, and received the same invitation to go there. She accepted the invitation, signed the same kind of form,[9] and a few minutes later was on the bus to Boonville. Like Molko, she did not know Boonville was part of the Unification Church.

At Boonville Leal experienced the same exercise-lecture-discussion regimen Molko received five months earlier. On Tuesday, her second day at Boonville, she asked Joshua, a codirector of the camp, whether the

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[9] Leal states the form she signed did not identify the Unification Church. She took it to be some kind of "hold harmless" form for the trip to Boonville.

group was part of a religious organization, and specifically whether they were "Moonies." Joshua said they were not Moonies, but were a form of Christian group. He said, however, they were "keeping quiet about it for a while" because they did not want to frighten people away.

After two days at Boonville, Leal went for a two-week seminar at Camp K. During this period she experienced the same type of doubts and fears as had Molko. At the end of the two weeks, she again asked Zielinski and Parker if the organization was "part of the Moonies." They assured her it was not. Later that evening they added that, while they were not Moonies, they did follow some of the teachings of Reverend Moon. Five days later—twenty-two days after recruiting Leal at the bus depot—they informed Leal they were in fact part of the Unification Church.

Leal remained with the group after learning its identity. During the next two months her family visited her and tried to convince her to get away from the Church for a while. She told her parents she would not leave the house with them for fear of being abducted and deprogrammed. On September 1 Leal flew to Boulder, Colorado, for a month-long series of advanced lectures, at the conclusion of which she became a formal Church member. From Boulder she went to Los Angeles, where she sold flowers on the street to raise money for the Church. On October 29, Leal was abducted from a Los Angeles street by deprogrammers hired by her parents. The deprogrammers successfully persuaded Leal to abandon her association with the Unification Church.

II. FRAUD AND DECEIT

A. *Standard of Review*

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party

is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) The purpose of summary judgment is to penetrate evasive language and adept pleading and to ascertain, by means of affidavits, the presence or absence of triable issues of fact. (Chern v. Bank of America (1976) 15 Cal.3d 866, 873.) Accordingly, the function of the trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves. (Walsh v. Walsh (1941) 18 Cal.2d 439, 441.)

Summary judgment is a drastic measure that deprives the losing party of a trial on the merits. (Mann v. Cracchiolo (1985) 38 Cal.3d 18, 35.) It should therefore be used with caution, so that it does not become a substitute for trial. (Rowland v. Christian (1968) 69 Cal.2d 108, 111.) The affidavits of the moving party should be strictly construed, and those of the opponent liberally construed. (Stationers Corp. v. Dun & Bradstreet (1965) 62 Cal.2d 412, 417.) Any doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. (Slobojan v. Western Travelers Life Ins. Co. (1969) 70 Cal.2d 432, 437.)

A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. (Stationers Corp. v. Dun & Bradstreet, supra, 62 Cal.2d at p. 417.) To succeed, the defendant must conclusively negate a necessary element of the plaintiff's case, and demonstrate that under no hypothesis is there a material issue of fact that requires the process of a trial. (*Ibid.*) We shall examine the grant of summary judgment in this case with the foregoing standard in mind.[10]

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[10] The Church argues that under Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, summary judgment should be deemed a "favored remedy" and viewed under a standard more favorable to the Church because the case involves the exercise

B. *Nature of the Fraud Claim*

The necessary elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage. (Seeger v. Odell (1941) 18 Cal.2d 409, 414.) Molko and Leal contend specified members of the Unification Church knowingly misrepresented the Church's identity with the intent to induce each of them to associate with and ultimately join the Church. Molko and Leal further contend they justifiably relied on those misrepresentations in unknowingly agreeing to participate in Church activities, and suffered psychological and financial damage as a result of their involvement with and membership in the Unification Church. They state they would not have chosen to associate with the Church had they known its true identity.

The Church concedes for pleading purposes its members knowingly misrepresented the Church's identity to Molko and Leal. It further concedes the misrepresentations were made with the intent to induce Molko and Leal first to associate with Church recruiters and later to continue participating in Church activities. Nor, finally, does the church contest plaintiffs' claims that they suffered damages as a result of their involvement with the Church. The Church contends, however, that it is entitled to summary judgment because the undisputed facts conclusively negate the element of justifiable reliance.

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of religious rights. While similar suggestions have been made elsewhere (see Comment, *Religious Torts: Applying the Consent Doctrine as Definitional Balancing* (1986) 19 U.C. Davis L. Rev. 949, 972-973), we decline the Church's invitation to elevate the standard here. As we stated in *Reader's Digest*, the higher standard for summary judgment in defamation cases is necessary because a verdict in such actions requires that actual malice be shown by clear and convincing evidence. (37 Cal.3d at p. 252.) No such necessity exists here.

Justifiable reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff's conduct which alters his legal relations, and when without such misrepresentation or nondisclosure he would not, in all reasonable probability, have entered into the contract or other transaction. (Wennerholm v. Stanford Univ. Sch. of Med. (1942) 20 Cal.2d 713, 717; Spinks v. Clark (1905) 147 Cal. 439, 444.) The Church contends that because Molko and Leal learned the Church's true identity prior to becoming formal members, the misrepresentations were "cured" and Molko and Leal could not have justifiably relied on them in deciding to join the Church. (See, e.g., Neet v. Holmes (1944) 25 Cal.2d 447, 459 [plaintiff who went ahead with transaction after learning true facts "waived the fraud"].)

Molko and Leal admit they were aware of the Church's identity at the time they formally joined. However, they contend that by the time the Church disclosed its true identity, the Church's agents had rendered them incapable of deciding *not* to join the Church, by subjecting them, without their knowledge or consent, to an intense program of coercive persuasion or mind control.[11] They contend, in other words, that the Church deceived them into a setting in which they could be "brainwashed," and that the Church could not then "cure" the deception by telling them the truth after their involuntary indoctrination was accomplished.[12] Molko and Leal therefore con-

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[11] We use the terms "coercive persuasion," "mind control," and "brainwashing" interchangeably to refer to the intense indoctrination procedures discussed herein.

[12] The Court of Appeal mischaracterized the fraud claims when it stated that plaintiffs' contention was, "they justifiably relied on representations they *knew to be untrue* because those who made the false representations first stripped [Molko and Leal] of their independent judgment." (Italics added.) The contention is rather that Molko and Leal justifiably relied on representations they *believed* to be true, and as a result were subjected to a process by which they were stripped of their independent judgment.

tend that a triable issue of fact remains as to whether the Church brainwashed them prior to disclosing its identity. If the answer is affirmative, they urge, they have established justifiable reliance.

Although Molko and Leal are far from the first to advance a brainwashing theory in a case involving religious recruitment and indoctrination (see, e.g., Katz v. Superior Court (1977) 73 Cal.App.3d 952; Meroni v. Holy Spirit Assn. (1984) 480 N.Y.S.2d 706; Orlando v. Alamo (8th Cir. 1981) 646 F.2d 1288; Turner v. Unification Church (1st Cir. 1979) 602 F.2d 458; Lewis v. The Holy Spirit Assn. (D.Mass 1983) 589 F.Supp. 10; Schuppin v. Unification Church (D.Vt. 1977) 435 F.Supp. 603), they are the first to do so in this court. We therefore find it appropriate to briefly review the concept of brainwashing.

Brainwashing is "a forcible indoctrination to induce someone to give up basic political, social or religious beliefs and attitudes and to accept contrasting regimented ideas." (Webster's Ninth New Collegiate Dict. (1987) p. 175.) The specific methods of indoctrination vary, but the basic theory is that brainwashing "is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations." (Peterson v. Sorlein (Minn. 1981) 299 N.W.2d 123, 126.)

The brainwashing concept is controversial. Some highly respected authorities conclude brainwashing exists and is remarkably effective. (See, e.g., Lifton, Thought Reform and the Psychology of Totalism (1961); Schein,

Coercive Persuasion (1961).) Some commentators additionally conclude that certain religious groups use brainwashing techniques to recruit and control members. (See, e.g., Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment* (1977) 51 So.Cal.L.Rev. 1, 3-9; Rudin & Rudin, Prison or Paradise? The New Religious Cults (1980) pp. 20-25; Clark et al., Destructive Cult Conversion: Theory, Research and Treatment (1979) 1-15.) Courts have recognized the existence of brainwashing in religious settings. (See Peterson v. Sorlein, supra, 299 N.W.2d at p. 126; Meroni v. Holy Spirit Assn. (1984) 125 Misc.2d 1061, 1067.)

To the contrary, other authorities believe brainwashing either does not exist at all (see Colemen, *New Religions and the Myth of Mind Control* (1984) Am. J. Orthopsychiatry 322, 323) or is effective only when combined with physical abuse or physical restraint (see Scheflein & Opton, The Mind Manipulators (1978) p. 23). We need not resolve the controversy; we need only conclude that the existence of such differing views compels the conclusion that Molko and Leal's theory indeed raises a factual question—viz., whether Molko and Leal were brainwashed—which, if not prohibited by other considerations, precludes a grant of summary judgment for the Church.

C. *The Singer/Benson Declarations*

In support of their theory, Molko and Leal sought to introduce the declarations of psychologist Dr. Margaret Singer and psychiatrist Dr. Samuel Benson. Both are experts on coercive persuasion and its use by religious groups. Drs. Singer and Benson examined Molko and Leal, and stated in their declarations that they believed the Unification Church's sophisticated indoctrination techniques had rendered Molko and Leal incapable of exercising their own will and judgment, or of responding independently upon learning of their deceptive recruitment.

The trial court and Court of Appeal ruled the Singer and Benson declarations inadmissible on the grounds that (1) the doctors' testimony conflicted with that of Molko and Leal and (2) introducing the declarations would raise inquiries forbidden by the free exercise clause of the First Amendment. We disagree with both conclusions.

The courts below found a conflict between (1) plaintiffs' statements that they joined the Church because it satisfied "personal concerns and anxieties" and (2) Singer's and Benson's statements that it was plaintiffs' unawareness of the Church's identity that caused them to stay. We perceive no such conflict. First, the very theory of coercive persuasion is that it operates, in part, by first amplifying the subject's personal concerns and anxieties and then providing a means of satisfying them. (Schein, Coercive Persuasion, supra, at pp. 117-258.) Second, the mere fact that the Church addressed plaintiffs' personal concerns and anxieties does not conclusively or necessarily establish that Molko and Leal would have chosen to associate with the Church had they known its identity. Thus, viewed in the light most favorable to Molko and Leal, both sets of statements are consistent with the contention that they were deceived into a stiuation in which they were then brainwashed. Accordingly, the Singer/Benson declarations are not, as the Church argues, made inadmissible by the rule in D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 21.

The courts below also held that the Singer and Benson declarations raised questions not allowable under the free exercise clause of the First Amendment to the United States Constitution. We disagree, for reasons we will discuss momentarily.

First, however, we must place the constitutional discussion in the correct perspective. The Court of Appeal declared that Molko and Leal's theory "rest[ed] entirely" on the Singer and Benson declarations. Accordingly, it

framed its discussion in terms of whether the declarations' admission would run afoul of the First Amendment. While we reach the same issues under both the federal and state Constitutions, we do so in terms not of the declarations, but of the brainwashing theory itself. Although the Singer and Benson declarations provide a scientific basis for and lend support to plaintiffs' brainwashing theory, we find that the basic theory is amply stated in plaintiffs' own declarations.[13] Therefore, even if arguendo the declarations were correctly excluded,[14] their exclusion does not affect the brainwashing theory for purposes of summary judgment. Molko and Leal have stated an issue of fact; if the issue survives constitutional analysis, it must defeat summary judgment on their actions for fraud.

D. *Constitutional Issues*

1. *Applicable Principles*

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting

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[13] Molko, for example, stated: "I felt my spirit of free will had been broken by [the] total absence of contact with the outside world, the rigid indoctrination program which I was going through daily, and the inability to make any decision on my own." He also stated the Church subjected him to "psychological and emotional manipulation." Leal stated: "While I had no intention of ever becoming a Moonie, in retrospect, I feel that I lost my ability to freely choose whether or not I wished to stay with the group." She also described herself as "pretty thoroughly indoctrinated" by her fourth day at Boonville, and as "robot-like." These statements, from documents incorporated into the pleadings, must be liberally construed for purposes of contesting a motion for summary judgment. (Gray v. Reeves (1977) 76 Cal.App.3d 567, 573.) So construed, they amply support Molko and Leal's coercive persuasion theory.

[14] In contending the declarations were properly excluded, the Church offers several arguments it did not raise in the Court of Appeal, and which we therefore do not reach. (Cal. Rules of Court, rule 29(b).)

the free exercise thereof. . . ." The provision creates two very different protections. The "establishment clause" guarantees the protections. The "establishment clause" guarantees the government will not impose religion on us; the "free exercise" clause guarantees the government will not prevent us from freely pursuing any religion we choose.

Because the First Amendment refers only to Congress, it originally did not apply to state and local governments. (See, e.g., Permoli v. New Orleans (1845) 44 U.S. (3 How.) 588, 610 [upholding conviction of Catholic priest for violating ordinance against exposing corpses to public view when he blessed the deceased at a funeral mass].) After the Civil War the states ratified the Fourteenth Amendment, and pursuant thereto the Supreme Court made the free exercise and establishment clauses federally enforceable against the states. (Everson v. Board of Education (1947) 330 U.S. 1, 8; Cantwell v. Connecticut (1940) 310 U.S. 296, 303-304.)

California guarantees free exercise and disestablishment in the state Constitution. (Cal. Const., art. I, § 4.)

The religion clauses protect only claims rooted in religious belief. (Wisconsin v. Yoder (1972) 406 U.S. 205, 215.) The free exercise clause protects religious beliefs absolutely. (Cantwell v. Connecticut, supra, 310 U.S. at pp. 303-304.) While a court can inquire into the *sincerity* of a person's beliefs, it may not judge the truth or falsity of those beliefs. (United States v. Ballard (1944) 322 U.S. 78, 86-88.) The government may neither compel affirmation of a religious belief (Torasco v. Watkins (1961) 367 U.S. 488, 495), nor penalize or discriminate against individuals or groups because of their religious beliefs (Fowler v. Rhode Island (1952) 345 U.S. 67, 70), nor use the taxing power to inhibit the dissemination of particular religious views (Murdock v. Pennsylvania (1943) 319 U.S. 105, 116).

However, while religious *belief* is absolutely protected, religiously motivated *conduct* is not. (Sherbert v. Verner (1963) 374 U.S. 398, 402-403; People v. Woody (1964) 61 Cal.2d 716, 718.) Such conduct "remains subject to regulation for the protection of society." (Cantwell v. Connecticut, supra, 310 U.S. at p. 304.) Government action burdening religious conduct is subject to a balancing test, in which the importance of the state's interest is weighed against the severity of the burden imposed on religion. (Wisconsin v. Yoder, supra, 406 U.S. at p. 214.) The greater the burden imposed on religion, the more compelling must be the government interest at stake. (Compare Wisconsin v. Yoder, supra, 406 U.S. at pp. 221-235 [government's strong interest in educating citizens insufficient to justify educational requirement that threatened continued survival of Old Order Amish communities], with Goldman v. Weinberger (1986) 475 U.S. 503, 508 [government's reasonable interest in uniform military attire sufficient to justify mild burden on religious expression created by ban against Jewish officer wearing a yarmulke].) A government action that passes the balancing test must also meet the further requirements that (1) no action imposing a lesser burden on religion would satisfy the government's interest and (2) the action does not discriminate between religions, or between religion and nonreligion. (Braunfield v. Brown (1961) 366 U.S. 599, 607.)

Applying these criteria, the Supreme Court has allowed some religious conduct to be banned entirely (see, e.g., Reynolds v. United States (1878) 98 U.S. 145, 166 [upholding law against polygamy]; Prince v. Massachusetts (1944) 321 U.S. 158, 170-171 [permitting state to prohibit parents from allowing their children to distribute religious literature when necessary to protect children's and safety]), and some conduct to be compelled in the face of religious objections (see, e.g., Jacobson v. Massachusetts (1905) 197 U.S. 11, 38 [upholding compulsory vac-

cinations for communicable diseases]; United States v. Lee (1982) 455 U.S. 252, 261 [upholding mandatory participation of Amish in Social Security system]).

Other religious conduct, though not banned, has been restricted. (See, e.g., Heffron v. International Society for Krishna Consciousness (1981) 452 U.S. 641, 654 [upholding law restricting sale and distribution of literature and soliciting of funds at state fair to booths at specified locations]; Cox v. New Hampshire (1941) 312 U.S. 569, 575 [upholding license requirement for religious parades].) Still other religious conduct, though not banned or restricted, has been made more costly. (See, e.g., Braunfield v. Brown, supra, 366 U.S. 599, 605 [upholding Sunday closing law in spite of financial burden on Orthodox Jew who must refrain from working Saturday as well]; Bob Jones University v. United States (1983) 461 U.S. 574, 604 [upholding denial of tax-exempt status to private school practicing religiously motivated racial discrimination]; Tony and Susan Alamo Foundation v. Secty. of Labor (1985) 471 U.S. 290, 305 [upholding minimum wage laws applicable to religious groups].)

While judicial sanctioning of tort recovery constitutes state action sufficient to invoke the same constitutional protections applicable to statutes and other legislative actions (New York Times v. Sullivan (1964) 376 U.S. 254, 265), religious groups are not immune from all tort liability. It is well settled, for example, that religious groups may be held liable in tort for secular acts. (See, e.g., Malloy v. Fong (1951) 37 Cal.2d 356, 372 [religious corporation liable for negligent driving by employee].) Most relevant here, in appropriate cases courts will recognize tort liability even for acts that are religiously motivated. (See, e.g., O'Moore v. Driscoll (1933) 135 Cal.App. 770, 778 [allowing priest's action against his superiors for false imprisonment as part of their effort to obtain his confession of sins]; Bear v. Reformed Mennonite Church (Pa. 1975) 341 A.2d 105, 107 [allow-

ing action for interference with marriage and business interests when church ordered congregation to "shun" former member]; Carrieri v. Bush (Wash. 1966) 419 P.2d 132, 137 [allowing action for alienation of affections when pastor counselled woman to leave husband who was "full of the devil"]; Candy H. v. Redemption Ranch, Inc. (M.D. Ala. 1983) 563 F.Supp. 505, 516 [allowing action for false imprisonment against religious group]; Van Schiack v. Church of Scientology of California, Inc.)D. Mass. 1982) 535 F.Supp. 1125, 1135 ["causes of action based upon some proscribed conduct may, thus, withstand a motion to dismiss even if the alleged wrongdoer acts upon a religious belief or is organized for a religious purpose"].)

2. *Constitutional Analysis of the Fraud Claim*

While the Unification Church's standing as a church is not at issue,[15] Molko and Leal contend the Church's misrepresentations were "entirely secular" and therefore not protected by the religion clauses. We disagree. Molko and Leal themselves claim the Church made its misrepresentations because of a belief in what they describe as "Heavenly Deception." According to Molko and Leal, that doctrine holds, in essence, that it is acceptable to lie to someone in order to give him the opportunity to hear Reverend Moon's teachings.[16] As alleged by the plaintiffs, the Church's deceptions, although secular on the surface, are clearly "rooted in religious belief." (Wisconsin v. Yoder, supra, 406 U.S. at p. 215.) While this does not mean such Church misrepresentations are immune from

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[15] Although he did not contest the Church's religious standing in the Court of Appeal, Molko now seeks to argue, in substance, that the Unification Church is not a bona fide religion because it is "dishonest." He may not raise this doubtful contention for the first time here. (Cal. Rules of Court, rule 29(b).)

[16] At oral argument, the Church disavowed any such belief.

government regulation, it does mean any such regulation must survive constitutional scrutiny.

Preliminarily, we note Molko and Leal do not contest the *sincerity* of what they understand to be the Church's beliefs; indeed, as just stated, they assert the Church's deceptions were the product of sincerely held beliefs. Our initial inquiry, then, is whether plaintiffs' actions for fraud implicate religious *belief* or religiously motivated *conduct*. If the former, the actions are barred. (Sherbert v. Verner, supra, 374 U.S. at pp. 402-403.) If the latter, further constitutional analysis is necessary.

Molko and Leal claim they do not challenge the truth or falsity of the Church's beliefs; they contend rather that they challenge only the Church's fraudulent conduct in implementing those beliefs. The Court of Appeal disagreed, reasoning that it would be impossible to consider Molko and Leal's theory "without questioning the authenticity and force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." The court relied on Katz v. Superior Court, supra, 73 Cal.App.3d 952, in reaching its conclusion, and the Church adopts this view. We therefore examine *Katz* to determine whether such reliance was properly placed.

Like the present case, *Katz* involved allegations of brainwashing against the Unification Church. The plaintiffs in *Katz*, however, were not former Church members but parents of current Church members. Claiming their adult children had been brainwashed, the parents sought and received orders from the superior court appointing them temporary conservators of the persons of their children. The parents' objective was to have their children deprogrammed and their children's association with the Unification Church terminated.

The Court of Appeal in *Katz* overturned the conservatorship orders, holding that in the absence of actions

rendering the adult believers "gravely disabled," the processes of the state could not "be used to deprive the believer of his freedom of action and to subject him to involuntary treatment." (73 Cal.App.3d at pp. 988-989.) The court declared the conservatorship orders violated the Church members' free exercise rights because the orders were based on a judgment regarding the truth or falsity of their beliefs. (*Id.* at p. 987.) Likening the Church members' radical changes of lifestyle to the refusal of the Amish in *Yoder* to send their children to high school, the court found the situation one in which conduct could not be separated from beliefs. (*Ibid.*) It queried "When the court is asked to determine whether that change i[n lifestyle] was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith?" (*Ibid.*)

The *Katz* court, of course, faced circumstances substantially different from those before us. The conservatorship orders, if allowed to stand, would have directly and severely burdened the Church members' absolute right to believe in the teachings of the Unification Church. Not only would the orders have allowed the parents to remove their adult children from the religious community they claimed to desire; the orders would have further allowed the parents to subject those individuals, against their will, to a program specifically intended to eradicate their current religious beliefs. Thus, the *Katz* court was correct—as in *Yoder*, the burden on the Church members' conduct was inseparable from the burden on their beliefs.

In sharp contrast, liability for fraud in the case at bar would burden on one's right to believe and no one's right to remain part of his religious community, nor would it subject anyone to involuntary deprogramming: the plaintiffs here are the former Church members themselves. It might, of course, somewhat burden the Church's efforts to recruit new members by deceptive means.

The *Katz* court also faced a legal question markedly different from that now posed: it considered whether a court could determine if an asserted religious conversion "was induced by faith or by coercive persuasion." (Katz v. Superior Court, supra, 73 Cal.App.3d at p. 987.) In other words, the *Katz* court had to decide whether a court could "question the validity" of a person's stated faith because someone *else* claimed that person was brainwashed. (*Ibid.*)

Again in contrast, the legal question here does *not* require a court to determine whether anyone's faith, current *or* past, is or was real. As stated above, Molko and Leal do not question the Church's beliefs. Neither do they challenge the "validity" of their former faith; they state quite plainly that their erstwhile beliefs in the Unification Church were sincere. The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion.

The Court of Appeal held that although *Katz* was different in certain ways, its analysis compelled the conclusion that to consider plaintiff's fraud claims would require "questioning the authenticity and the force" of the Church's teachings. We disagree. The challenge here, as we have stated, is not to the Church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. That practice is not itself *belief*—it is *conduct* "subject to regulation for the protection of society." (Cantwell v. Connecticut, supra, 310 U.S. at p. 304.)

Our next inquiry, then, is whether the state's interest in allowing tort liability for the Chuch's deceptive practices is important enough to outweigh any burden such

liability would impose on the Church's religious conduct. (Wisconsin v. Yoder, supra, 406 U.S. at p. 221.)

We turn first to the question whether tort liability for fraudulent recruiting practices imposes any burden on the free exercise of the Unification Church's religion. We think it does. While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the Church to possible monetary loss for doing so. Further, liability presumably impairs the Church's ability to convert nonbelievers, because some potential members who would have been recruited by deception will choose not to associate with the Church when they are told its true identity.

Yet these burdens, while real, are not substantial. Being subject to liability for fraud does not in any way or degree prevent or inhibit Church members from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing literature, proselytizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population. It certainly does not, like the educational requirement in *Yoder*, compel Church members to perform acts "at odds with fundamental tenets of their religious beliefs." (Wisconsin v. Yoder, supra, 406 U.S. at p. 218.) At most, it potentially closes one questionable avenue for bringing new members into the Church.

We must next consider whether a compelling state interest justifies the marginal burden such liability imposes on the Church's free exercise rights. We have no difficulty in finding such an interest in the "substantial threat to public safety, peace or order" the Church's allegedly fraudulent conduct poses. (Sherbert v. Verner,

supra, 374 U.S. at p. 403.) For it is one thing when a person knowingly and voluntarily submits to a process involving coercive influence, as a novice does on entering a monastery or a seminary. (See Schein, Coercive Persuasion (1961) p. 272.) But it is quite another when a person is subjected to coercive persuasion without his knowledge or consent. While some individuals who experience coercive persuasion emerge unscathed, many others develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizopherenia, self-mutilation, and suicide. (See generally Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, supra, 51 So.Cal. L.Rev. 1, 10-25, and sources cited therein.) The state clearly has a compelling interest in preventing its citizens from being deceived into submitting unknowingly to such a potentially dangerous process.

The state has an equally compelling interest in protecting the family institution. (See, e.g., Reynolds v. United States, supra, 98 U.S. 145, 165-166; Meyer v. Nebraska (1923) 262 U.S. 390, 399-403; Pierce v. Society of Sisters (1925) 268 U.S. 510, 534-535; Moore v. City of East Cleveland (1977) 431 U.S. 494, 503-504 [plur. opn.].) Since the family almost invariably suffers great stress and sometimes incurs significant financial loss when one of its members is unknowingly subjected to coercive persuasion (Enroth, Youth, Brainwashing), and the Extremist Cults (1977) pp. 199-201), the state has a compelling interest in protecting families from suffering such impairments as a result of fraud and deception.

We conclude, therefore, that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to

public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.

Our analysis cannot end here, however. A government action burdening free exercise, even though justified by a compelling state interest, is impermissible if any action imposing a lesser burden on religion would satisfy that interest. (Thomas v. Review Bd., Ind. Empl. Sec. Div. (1981) 450 U.S. 707, 718; Sherbert v. Verner, supra, 374 U.S. at p. 406; Braunfield v. Brown, supra, 366 U.S. at p. 607.) After careful consideration, we perceive no such less restrictive alternative available. It has been suggested, for example, that brainwashing be criminalized. (Lucksted & Martell, *Cults: A Conflict Between Religious Liberty and Involuntary Servitude?* (June 1982) F.B.I. Law Enfrocement Bull. at p. 21.) This approach, which would invoke the coercive power of the state and could result in the jailing of church members, would clearly impose a greater burden on religion than would civil tort liability for fraud. It has also been suggested that the law should authorize involuntary deprogramming of brainwashed individuals by their friends or families. (Aronin, *Cults, Deprogramming, and Guardianship: A Model Legislative Proposal* (1982) 17 Colum. J. L. & Soc. Probs. 163, 183-216.) But the potentially severe burdens on religion inherent in this approach are evident from our discussion of *Katz, supra.* Lastly, it has been proposed that proselytizers be required to obtain informed consent prior to attempting to initiate religious conversions. (Delgado, *Cults and Conversion: The Case For Informed Consent* (1982) 16 Ga.L.Rev. 533, 537-540.) To the extent such an approach would require the active dissemination of specific information about a religion's nature, activities and lifestyle, however, it would also burden religion to a greater extent than would simple passive liability for fraud. In short, it appears that to allow injured parties to bring

private actions for fraud is the least restrictive means available for advancing the state's interest in protecting individuals and families from the harmful effects of fraudulent recruitment.

Finally, even though the state action is justified by a compelling state interest and imposes the minimum burden required to satisfy that interest, it can be upheld only if it (1) has the purpose and effect of advancing the state's secular goals and (2) does not discriminate between religions, or between religion and nonreligion. (Braunfield v. Brown, supra, 366 U.S. at p. 607.) We find that judicial sanctioning of traditional tort liability for fraudulent recruitment saitsfies these standards. First, its purpose and effect is plainly to advance the legitimate secular goal of protecting persons from being harmed by fraud. Second, it is nondiscriminatory: all organizations, religious or otherwise, may be held liable for damages caused by their fraudulent acts. Were a nonreligious organization—e.g., a group espousing a political or social cause—to deceive a person into unknowingly submitting to coercive persuasion, the same liability would ensue.

We conclude that neither the federal nor state Constitution bars Molko and Leal from bringing traditional fraud actions against the Church for allegedly inducing them, by misrepresentation and concealment of its identity, into unknowingly entering an atmosphere in which they were then subjected to coercive persuasion. Because triable issues of fact exist as to (1) whether the forms Molko and Leal signed before going to Boonville put them on notice regarding the Church's identity and (2) whether Molko and Leal were, by means of coercive persuasion, rendered unable to respond independently upon learning they had been deceived, we hold that the Court of Appeal erred in affirming the summary judgment for the Church as to plaintiffs' actions for fraud.

III. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A. *Nature of the Claim*

The elements of a cause of action for intentional infliction of emotional distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering, and (4) actual and proximate causation of the emotional distress. (Cole v. Fair Oaks Fire Protection Dist. (1987) 43 Cal.3d 148, 155, fn. 7.) Molko and Leal contend the Church's fraudulent and coercive conduct was outrageous, was carried out with reckless disregard of the probability of causing them emotional distress, and was the actual and proximate cause of their severe emotional suffering.

The Court of Appeal found in part that threats of divine retribution, of which Molko and Leal complained, were protected religious speech and could not form the basis of a claim of intentional infliction of emotional distress. We agree with this view. To the extent the claims are based merely on threats of divine retribution if Molko and Leal left the church, they cannot stand. (See Fowler v. Rhode Island, supra, 345 U.S. at p. 70 [court cannot regulate or control sermons]; Van Schaick v. Church of Scientology of Cal., Inc., supra, 535 F.Supp. at p. 1139.)

However, the claims do not rest solely or even primarily on threats of divine retribution. Molko and Leal essentially contend the same conduct that supports their fraud actions—i.e., misrepresentation and concealment of the Church's identity for the purpose of inducing them to submit unknowingly to coercive persuasion—also gives rise to an action for intentional infliction of emotional distress. The Court of Appeal, having found the fraud theory constitutionally impermissible, naturally found the same theory could not constitutionally provide the basis

for a different cause of action. Proceeding on the assumption that Molko and Leal had freely joined the Church, the court went on to find the Church's conduct could not be considered "extreme and outrageous" in the sense required to support an action for emotional distress.

Since we have determined that Molko and Leal's fraud theory *is* constitutionally permissible, we must consider whether the Church's conduct under that theory also gives rise to an action for intentional infliction of emotional distress. First, however, we consider two contentions raised by the Church.

B. *The Church's Preliminary Arguments*

The Church initially contends that all the misrepresentations of which Molko and Leal complain are privileged under Civil Code section 47 as "communication[s] without malice, to a person interested therein, . . . by one who is also interested. . . ." The point is without merit. Molko and Leal concede that the misrepresentations were communications, and that the Church's intent to recruit Molko and Leal did not reflect a "state of mind arising from hatred or ill-will," as required for a showing of malice. (Agarwal v. Johnson (1979) 25 Cal.3d 932, 944.) However, they correctly urge that the communications cannot be said to have been from one "interested" party to another. The Church relies on Brewer v. Baptist Church (1948) 32 Cal.2d 791, to establish that Molko and Leal were interested parties. But *Brewer* holds that "the common interest of the *members* of a church in church matters is sufficient to give rise to a qualified privilege to communication *between members* on subjects relating to the church's interests." (*Id.* at p. 796, italics added.) Here the Church has vigorously taken the position that Molko and Leal did not become Church members until after *learning* of the deceptions. It cannot now inconsistently claim a

privilege on the theory that Molko and Leal were members at the time the deceptions occurred.

The Church also contends that a statement by Leal in her deposition that certain of her harms were "self-inflicted" constitutes an admission of consent and therefore provides a complete defense to liability under Code of Civil Procedure section 3515. This argument is also without merit. Leal's statement relates to her final few weeks with the Church, during which she sold flowers on the streets of Los Angeles from 7 a.m. until midnight for 19 of 20 consecutive days. Leal said the physical harms she experienced were self-inflicted because she was obeying the Church's doctrine of suffering to "pay indemnity" to God. Viewed in the light most favorable to Leal, as it must be on motion for summary judgment, her statement reflects not consent but mere submission. In any event, since the statement relates to a period of time considerably later than that during which the alleged fraud and brainwashing occurred, it cannot provide a defense to the present action.

C. *Analysis of the Claim*

We begin by observing that the Church does not attempt to negate (1) its intention to cause, or its reckless disregard of the probability of causing, emotional distress, (2) plaintiffs' severe emotional suffering, or (3) its conduct's actual and proximate causation of that suffering. Because the Church must conclusively negate at least one necessary element of this cause of action to be entitled to summary judgment (Stationers Corp. v. Dun & Bradstreet, supra, 62 Cal.2d at p. 417.), the propriety of the summary judgment depends on whether the Church can establish as a matter of law that its conduct, even under Molko and Leal's theory, was not "extreme and outrageous" in the sense required to support an action for emotional distress.

Conduct is extreme and outrageous when it "exceeds all bounds of decency usually tolerated by a decent society, [and is] of a nature which is calculated to cause, and does cause, mental distress." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.) Liability "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." (Rest.2d Torts, § 46, com. d.) "Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.)

The Church offers two arguments why its conduct was not, as a matter of law, extreme and outrageous. First it contends its actions amounted to nothing more than "intensive religious practice," and therefore were different only in degree, not in kind, from those of many other religious groups. We find this claim unconvincing. Although fasting, poverty, silence or cloistered living may constitute intensive religious practice, we have already determined that fraud, even though purported to be religiously motivated, is actionable conduct under the circumstances presented here.

Second, as mentioned above, the Church argues that Leal's long hours of work were "self-inflicted." It contends its encouragement for her to sell flowers and solicit money does not constitute outrageous conduct. But since the conduct that the Church relies on occurred after Leal had formally joined the Church, the argument has no bearing on whether its original fraudulent inducement into an atmosphere of coercive persuasion—the conduct at issue—is extreme and outrageous.

Viewed in the light most favorable to plaintiffs, the Church's continued deceptions might well be seen as conduct breaching plaintiff's trust in the integrity of those who were promising to make their lives more meaningful. So viewed, the Church's actions might well constitute an abuse of "a relation or position which gives [the Church] power to damage the plaintiff's interest." (Cole v. Fair Oaks Fire Protection Dist., supra, 43 Cal.3d at p. 155, fn. 7.)

"Where reasonable men may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." (Alcorn v. Ambro Engineering, Inc. (1970) 2 Cal.3d 493, 499.) Since reasonable persons could differ here, a question of fact remains as to whether the Church's conduct was outrageous for purposes of this action. It follows that the Court of Appeal erred in affirming the summary judgment for the Church as to plaintiff's actions for intentional infliction of emotional distress.

IV. FALSE IMPRISONMENT

False imprisonment is "the unlawful violation of the personal liberty of another." (Pen. Code, § 236; see Parrot v. Bank of America (1950) 97 Cal.App.2d 14, 22 [definition of crime and tort the same].) "The tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." (City of Newport Beach v. Sasse (1970) 9 Cal.App.3d 803, 810.) A person is falsely imprisoned "if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another." (Schanafelt v. Seaboard Finance Co. (1951) 108 Cal.App.2d 420, 422-423.)

Leal contends she was falsely imprisoned by the Church at Boonville, at Camp K, at Boulder, at Los Angeles, and

at various locations in San Francisco.[17] She admits she was theoretically free to depart at any time; she was not physically restrained, subjected to threats of physical force, or subjectively afraid of physical force. She insists, however, that her "imprisonment arose from the harm she came to believe would result if she left the community." That harm, specifically, was that her family "would be damned in Hell forever and they would forever feel sorry for having blown their one chance to unite with the Messiah and make it to Heaven."

The claim cannot survive constitutional scrutiny. Although Leal correctly asserts that false imprisonment may be "effected by . . . fraud or deceit" (Pen. Code, § 237), her theory implicates the Church's beliefs: it plainly seeks to make the Church liable for threatening divine retribution. As we stated earlier, such threats are protected religious speech (see Fowler v. Rhode Island, supra, 345 U.S. at p. 70; Van Schaick v. Church of Scientology of Cal., Inc., supra, 535 F.Supp. at p. 1139) and cannot provide the basis for tort liability. Accordingly, we hold the Court of Appeal correctly affirmed the summary judgment for the Church as to Leal's action for false imprisonment.

V. RESTITUTION

Molko seeks restitution of his $6,000 gift to the Church. His claim arises directly out of his fraud theory: he asserts that the Church deceived him into unknowingly submitting to coercive persuasion, thereby obtaining undue influence over him which it later used to extract the gift.

The Court of Appeal held that Molko could not challenge the validity of the gift without challenging the

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[17] Although Molko also alleged a cause of action for false imprisonment, he has chosen not to contest the Court of Appeal's affirmance of summary judgment for the Church on that action.

validity of his former beliefs, which is constitutionally forbidden. We disagree.[18] Molko's assertion is a natural extension of his fraud theory: he contends, in effect, that one of his damages from the fraud was the $6000 loss.

Undue influence is "the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him." (Civ. Code, § 1575.) Stated another way, undue influence is "that kind of influence or *supremacy of one mind over another* by which that other is prevented from acting according to his own wish or judgment" (Bolander v. Thompson (1943) 57 Cal.App.2d 444, 448, italics added); it occurs when "one party uses [its] dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which he would not otherwise have consented" (Calamari & Perillo, The Law of Contracts (2d ed. 1977) pp. 274-275).

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[18] Although circumstances sufficient to support such a claim occur infrequently, religiously motivated gifts have occasionally been set aside on a particularly strong showing of undue influence by religious advisors. (See, e.g., Estate of Bourquin (1958) 161 Cal. App.2d 289, 299-300 [will leaving bulk of estate to a church rest home was the result of undue influence of rest home employees, who held confidential relationship with testator as religious advisors].)

The Court of Appeal cited Estate of Supple (1966) 247 Cal.App. 2d 410, 414-415, to support its position. *Supple*, however, was not an undue influence case. In *Supple*, a lifelong church member left a portion of his estate to various church charities with which he had a longstanding association. His grandnephew challenged the will on the sole ground that the church's teachings were false, and hence the testator was in that sense tricked into leaving part of his estate to the church. (*Id.* at p. 412.) Such a direct attack on the truth or falsity of religious beliefs was clearly prohibited by the First Amendment. (United States v. Ballard, supra, 322 U.S. at pp. 86-88.) However, as we explained above in distinguishing Katz v. Superior Court, supra, 73 Cal.App.3d 952, Molko does not challenge the validity of his former beliefs. Therefore *Supple* is inapplicable.

We have already concluded, in the context of Molko's fraud claim, that a triable issue of fact exists as to whether Molko lost his ability to make independent decisions as a result of being deceived into submitting unknowingly to coercive persuasion. It would be odd indeed, then, if we did not find that a triable issue of fact exists as to whether, by means of the alleged deception, the Church established and used its dominant psychological position and its confidential relationship with Molko "for the purpose of obtaining unfair advantage over him" with regard to his $6,000 gift.

We do so find, and accordingly hold that the Court of Appeal erred in affirming the summary judgment for the Church as to Molko's claim for restitution.[19]

VI. THE CHURCH'S CROSS-COMPLAINT AGAINST MAXWELL

The Church alleged that Maxwell's deprogramming activities violated the federal and state civil rights of the Church and its members. (42 U.S.C. § 1985(3) [hereafter section 1985(3)]; Civ. Code, §§ 51.7, 52.) It also asserted a cause of action against Maxwell for full or partial indemnity, on the theory that he, by kidnapping and deprogramming Molko, had wholly or partially caused any damages for which the Church might be held liable to Molko.

The trial court sustained without leave to amend Maxwell's demurrers to all three causes of action, and entered judgments of dismissal for him. The Court of Appeal reversed the judgments of dismissal on the state and federal civil rights causes of action, holding that the court abused its discretion by refusing leave to amend the

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[19] Accordingly, we need not consider Molko's invitation to adopt the views of the Nebraska and Rhode Island supreme courts that gifts to religious leaders or advisors are *presumptively* made under undue influence. (*See* Guill v. Wolper (Neb. 1974) 218 N.W.2d 224, 235; Nelson v. Dodge (R.I. 1949) 68 A.2d 51, 55.)

complaint. Because it affirmed the summary judgment for the Church in the action by Molko and Leal, it did not review the dismissal of the Church's cause of action for indemnity.

A. *The Federal Claim* [20]

The Church alleged that Maxwell conspired with others to deprive it and its members of equal protection of the laws and of "equal privileges and immunities under the laws." It contended Maxwell's purpose was, inter alia, to prevent Church members from freely exercising their religious beliefs through interstate travel. The Church sought injunctive relief as well as compensatory and punitive damages. In its appeal to the Court of Appeal it abandoned its contention that it could assert free exercise claims under section 1985(3), but continued to assert it had representational standing to sue for a violation of its members' constitutionally guaranteed right to travel. (Zobel v. Williams (1982) 457 U.S. 55.) The Court of Appeal agreed and reversed the dismissal on that ground.

Maxwell offers three arguments why his demurrer to the Church's federal claim was properly sustained. As will appear, none is persuasive. First, he contends the Church failed to meet the second of three requirements for representational standing set forth in Hunt v. Washington Apple Advertising Comm'n (1977) 432 U.S. 333, 343. The requirement in question is that "the interests [that the organization] seeks to protect are germane to the organization's purpose." (*Ibid.*) Maxwell asks us to infer from that requirement a test of the Church's status as a bona fide religious organization: apparently he wishes to argue that the Church is a political rather

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[20] In this court Maxwell does not challenge the decision of the Court of Appeal as to the Church's claim under state civil rights law.

than religious organization, and that its members' right to travel is somehow not germane to the organization's true purpose. But the contention has no support in the law, and we decline to adopt such a novel reading of a federal statute.

Second, Maxwell contends his demurrer was properly sustained because a conspiracy to infringe First Amendment rights does not violate section 1985(3) unless either a state is involved in the conspiracy or the conspiracy aims to influence the state's activity. While the contention correctly states the Supreme Court's holding in Carpenters v. Scott (1983) 463 U.S. 825, 830, it overlooks the Court's further statement in *Carpenters* that in accordance with Griffin v. Breckenridge (1971) 403 U.S. 88, section 1985(3) *does* reach purely private conspiracies aimed at depriving persons of the constitutionally guaranteed right to travel. (Carpenters v. Scott, supra, 463 U.S. at pp. 832-833.) The Church alleges just such a conspiracy here.[21]

Third, Maxwell contends the Church's federal cause of action was barred by the state statute of limitations because it was subject to the one-year limitation period for personal injury claims set forth in Code of Civil Procedure section 340, subdivision (2). However, as the Court of Appeal correctly held, the Church seeks to amend its complaint to seek injunctive relief only as to what it

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[21] The *Carpenters* court declined to pass on whether section 1985(3) reaches conspiracies other than those motivated by racial bias. (463 U.S. at p. 835.) The Fourth Circuit, however, noting that "the lower federal courts have, almost without exception, extended the coverage of the statute to religious groups [citations]," has expressly held that a conspiracy against the Unification Church motivated by religious discrimination falls within the ambit of section 1985(3). (Ward v. Connor (4th Cir. 1981) 657 F.2d 45, 48; see generally Annot., Civil Liability for "Deprogramming" Member of Religious Sect (1982) 11. A.L.R.4th 228.) As Maxwell does not contest the Church's claim on this basis, we need not address this question of federal law.

alleges to be an ongoing conspiracy among Maxwell and the other cross-defendants. The statute of limitations does not begin to run in civil conspiracy cases until the last overt act of the conspiracy has been completed. (Wyatt v. Union Mortgage Co. (1979) 24 Cal.3d 773, 787.) Thus, if a continuing conspiracy is proved, the action is obviously timely; if no conspiracy is proved, injustice relief will be denied. The determinative issue is factual and cannot be resolved by demurrer.

B. *Indemnification*

As stated above, the trial court sustained Maxwell's demurrer to the Church's cause of action for indemnification, and entered a judgment of dismissal; the Court of Appeal, because it affirmed the summary judgment for the Church in plaintiffs' action for damages, did not address any of the issues raised in the Church's appeal from the judgment of dismissal. Because we reverse the summary judgment on the merits, however, those issues are no longer moot.

The Church bases its indemnification action on the theory that Maxwell, by kidnapping and deprogramming Molko, wholly or partially caused any damages for which the Church might be held liable to Molko. The Church contends, in other words, that if it is held liable to Molko as an intentional tortfeasor, it should be allowed to seek indemnification from Maxwell as a concurrent intentional tortfeasor.

Thus the Church asks us to consider an issue of first impression—whether the equitable indemnity doctrine, as set forth by this court in American Motorcycle Assn. v. Superior Court (1978) 20 Cal.3d 578, permits an intentional tortfeasor to obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis. We must decline the invitation, however, because the facts in the present case would not support such an action even if it were otherwise permitted.

It is not sufficient, for purposes of indemnification, for a defendant simply to claim someone else caused all or part of the plaintiffs' damages. To state a claim for indemnification, a defendant must allege that the same harm for which he may be held liable is properly attributable—at least in part—to the alleged indemnitor. (See, e.g., Rest.2d Torts, § 886B, subd. (1): "If two persons are liable in tort to a third person for the same harm and one of them discharges the liability of both, he is entitled to indemnity from the other . . . .") If a defendant believes the plaintiff's injuries were the result of a different harm altogether, he may argue the point to the jury and escape liability if successful. Absent some claim of mutual liability for the same harm, however—under joint-and-several or vicarious liability principles, for example—an indemnification action will not lie. (*See* American Motorcycle Assn. v. Superior Court, supra, 20 Cal.3d 578 at p. 606 ["[W]e think it only fair that a defendant who may be jointly and severally liable for all of the plaintiff's damages be permitted to bring other concurrent tortfeasors into the suit."].)

The Church claims not that Maxwell shares responsibility for any harm the Church caused Molko through its alleged deception and coercive persuasion, but rather that Maxwell's kidnapping and deprogramming of Molko were the actual causes of Molko's damages—i.e., that Molko's damages were the result of a *different harm* than the one for which the Church might be held liable. Although the Church may freely attempt to convince the jury that Maxwell's actions rather than its own caused any damages Molko suffered, it does not allege that it and Maxwell are in some way mutually liable for the same harm; thus it does not state facts sufficient to support an indemnification action.

Accordingly, we leave for another day the question whether an intentional tortfeasor may obtain indemnity from concurrent intentional tortfeasors on a comparative fault basis.

VII. CONCLUSION

For the reasons given above, we conclude as follows: On the complaint, the judgment of the Court of Appeal is affirmed insofar as it affirms the summary judgment for the Church on the cause of action for false imprisonment, and reversed insofar as it affirms the summary judgment for the Church on the causes of action for fraud, intentional infliction of emotional distress, and restitution. On the cross-complaint, the judgment of the Court of Appeal is affirmed insofar as it reverses the judgment of dismissal for cross-defendant Maxwell on the cause of action for federal civil rights violations, and insofor as it implicitly affirms the judgment of dismissal for Maxwell on the Church's cause of action for indemnity.

MOSK, J.

WE CONCUR: LUCAS, C.J.
BROUSSARD, J.
ARGUELLES, J.
EAGLESON, J.
KAUFMAN, J.

CONCURRING AND DISSENTING OPINION BY ANDERSON, J.

I concur with the majority regarding the disposition of the false imprisonment cause of action as well as the claims raised in the cross-complaint, but respectfully disagree with the reversal of summary judgment in connection with the fraud, intentional infliction of emotional distress and the restitution counts. I am strongly persuaded that the imposition of tort liability for "heavenly deception" in proselytizing and for its ensuing "systematic manipulation of social influences" (religious persuasion) runs counter to established legal precedents and the free exercise clause of the First Amendment. Furthermore, imposition of liability in such cases constitutes bad legal policy, since it unnecessarily projects the court into the arena of divining the truth or falsity of religious beliefs. I respectfully suggest that the trial court's thorough analysis, and the Court of Appeal's well reasoned affirmance thereof correctly apply the law.

I. *Fraud*

Under well-settled law, the necessary elements of fraud are: (1) misrepresentation (false representation, concealment or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage. (*Seeger v. Odell* (1941) 18 Cal.2d 409, 411; 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 446, p. 2711.) It is likewise recognized that in order to render the fraud actionable, the misrepresentation or nondisclosure must be not only the cause in fact (causa sine qua non), but also the legal or immediate cause of the damages. Indeed, the majority quite agrees: "Justifiable reliance exists when the misrepresentation or nondisclosure was *an immediate cause* of the plaintiff's conduct which alters his legal relations, and when without such misrepresentation or nondisclosure he would

not, in all probability, have entered into the contract or other transaction." (*Wennerholm* v. *Stanfod Univ. Sch. of Med.* (1942) 20 Cal.2d 713, 717; *Spinks* v. *Clark* (1905) 147 Cal. 439, 444, emphasis added.) However, contrary to the conclusion reached by the majority, I find appellants' fraud cause of action fatally defective for two fundamental reasons: (1) the record fails to show that the initial fraud committed by the proselytizers was relied upon by appellants at the crucial time of joining the Church; and (2) the immediate cause of appellants' damages was not the incipient fraud but rather the ensuing indoctrination and conversion (dubbed by the majority as "brainwashing"). However, the indoctrination achieved by persuasion absent physical force or violence is not unlawful; religious conversion is simply not subject to judicial review. It follows that neither of these questions create a triable issue of fact which defeats the grant of summary judgment.

A. *Reliance on Initial Misrepresentation*

In granting summary judgment on the fraud cause of action, the trial court found that appellants, by their own admissions, joined the Church because the "Association satisfied personal concerns and anxieties both were experiencing"; it did not find they joined in reliance on the initial misrepresentations of the recruiters. This finding of the trial court is well supported by the record.

Molko's deposition reveals that his reason for accepting the invitation to participate was to improve himself and to become a better person. As early as the second day spent in Booneville, Molko already felt involved and was attracted to the group because of the brotherly love experienced there. Although the regimented life was not entirely to his liking, he stayed there because: (1) he was thinking about the meaning of his life; (2) he was curious; and (3) he wanted to know people better, espe-

cially Bethie Rubenstein and Gloria LaGrasse who were "fascinating, intelligent—a joy to be with." On learning within less than two weeks that the group belonged to the "Moonies," Molko (while admittedly confused a bit) took a "wait and see" attitude, remained with the group and repeatedly rejected calls coming from friends and parents imploring him to quit.

Leal accepted the initial invitation also for personal reasons. She had little emotional and psychological support from her family and was longing for affection and understanding. She left San Diego, a "cold and impersonal" city in search of a community. She went to Booneville to "learn how a community gets together to actually accomplish something." By the fourth day she felt completely involved. She was attracted by the sincere, affectionate attention she received from the group and stayed there because she was happy and grew attached to the group which overwhelmed her with praise, love and promised to take care of her and provide all the things she had ever wanted. In addition, she was impressed by the commitment and hard work of the others, and was anxious to prove herself worthy of their attention. Also, she found the relinquishment of individual responsibility and the acceptance of a group identity to be true happiness, akin to "the joy of childhood." In her own words: "Departing from Booneville was prevented as a result of large doses of attention and listening and care such as that between highly expressive, loving friends or family."

Despite these undisputed facts the majority maintains that appellants' behavior following the initial fraud did not negate the element of reliance (i.e., the initial fraud was not "cured"); they conclude that as a result of the Church's initial "heavenly deception" (i.e., fraudulent conduct), appellants were placed in a situation where they were "brainwashed" and thereby deprived of their independent judgment. The majority predicates this

"brainwashing" theory primarily upon appellants' declarations that due to the rigid indoctrination, psychological and emotional pressure, they lost their ability to freely decide to stay with the group and, instead, they acted in a robot-like manner. Such conclusion fails to withstand critical analysis.

Under the widely adopted view, the fact that the religious belief does not originate in a voluntary choice does not, as a rule, raise a presumption of incapacity to affirm the belief as one's own. (Saphiro, *"Mind Control" or Intensity of Faith: The Constitutional Protection of Religious Beliefs* (1978) 13 Harv. Civ. Liberties L.Rev. 751, 789.) To the contrary, it has been said that "An intentional deception should not justify impinging upon a convert's ideas as long as the convert has the ability to affirm his faith after the deception is realized. If he retains his personhood (i.e., the capacity to evaluate the commitment) he can still adopt or ratify his belief as his own." (Saphiro, *"Of Robots, Persons and Protection of Religious Beliefs* (1982-1983) 56 So.Cal.L.Rev. 1277, 1295.) By illustration, Mr. Saphiro points out that if the proselytizer had offered merely a self-improvement course and the subsequent banquet and lectures in fact had aimed at converting the recruit to a religion, the deceptiveness of the introduction would be immaterial as long as the convert would be still capable of adopting or affirming his belief. (*Ibid.*)

The evidence before us, including appellants's depositions, clearly indicates that the Church's indoctrination did not render appellants mindless puppets or robot-like creatures. Instead, it shows that both before and after the disclosure of the group's true identity, both appellants retained their ability to think, to evaluate the events and to exercise their independent judgment. For example, the record reveals that on the first two days in Booneville Molko became so dissatisfied with the regimented life that he decided to return to San Francisco.

He discussed his decision with two other members of the group. While he was advised that he was free to leave, he decided to stay because he was persuaded that it was to his own benefit to do so. Also, during the first week in Booneville Molko expressed with other people (although in private) his resentment about the lectures and regimentation and on noticing that he was being followed by Joe Taylor, a Church member, he violently confronted him, threatening to smash him in the face. After learning that the group was connected with the Church, Molko did not simply acquiesce, but rather consulted Gloria, and his decision to stay was again the result of an evaluation of this turn of events. Lastly, despite all the lectures, discussion and other forms of indoctrination, Molko still doubted that Reverend Moon was the new Messiah and he shared his doubts with other Church members as well, including Gloria and Victoria.

The deposition testimony of appellant Leal is likewise replete with facts indicating that her joining the Church did not rest upon reliance on the initial representation, but rather her conscious evaluation and adoption of the Church's teachings. In view of his sworn testimony, the unsupported allegations of brainwashing in appellants' pleadings and declarations should not be deemed sufficient to raise that triable issue of material fact which requires reversal of the grant of summary judgment.

B. *Conversion is the Immediate Cause of Damages*

Reversal of summary judgment is improper for the additional reason that the immediate cause of damages was not the incipient fraud, i.e., heavenly deception, but rather the ensuing indoctrination effected by "brainwashing" which ultimately resulted in appellants' conversion. That the gist of appellants' fraud complaint was that the conversion was achieved by actionable "brainwashing" is manifest. Indeed, the majority so defines the issue: "Molko and Leal therefore contend that a triable issue

of fact remains as to whether the Church brainwashed them prior to disclosing its identity. If the answer is affirmative, they argue, they have established justifiable reliance." Again, the majority declares that appellants' "statements are consistent with the contention that they were deceived into a situation in which they were then brainwashed" and summary judgment on the fraud count must be overturned because the brainwashing theory advanced in appellants' declarations a triable issue of fact. This same notion not unsurprisingly has its genesis in appellants' briefs. For example, Molko asserts in his opening brief that "By means of deceits and deceptions utilized in order to place plaintiff in Boon[e]ville, plaintiff was abruptly thrust into an environment directed entirely toward the *conversion* of plaintiff's allegiance to accept Sun Myung Moon as the Messiah and to become a member of the Unification Church . . . . The *conversion* of plaintiff occurred in an unusual place." (Emphasis partially added.) Amici likewise emphasize that the immediate cause of damages was the process of conversion which has been known by many labels—brainwashing, thought reform, coercive persuasion, etc.

Identification of the indoctrination (i.e., "brainwashing") and the conversion as the critical issues for determining the applicability of summary judgment carries far-reaching legal significance. For under settled law the indoctrination methods employed in obtaining conversion (including coercive persuasion, mind control and/or brainwashing) are not actionable per se; religious conversion is not subject to judicial scrutiny regardless of the methods used because such scrutiny necessarily entails the questioning of religious faith—scrutiny that is absolutely forbidden by the First Amendment. Moreover, even if judicial scrutiny were permitted, governmental interference in this case is not warranted.

(1) *The Introduction is Not Actionable*

The primary cases holding that religious indoctrination, even if achieved by "brainwashing," is not tortious if unaccompanied by physical force or threat are *Lewis* v. *Holy Spirit Assn. for Unification* (D. Mass. 1983) 589 F.Supp. 10; *Meroni* v. *Ho'y Spirit Assn. for Unification* (1986) 506 N.Y.S.2d 174; and *Application of Conversion Center* (Pa. 1957) 130 A.2d 107.

The *Lewis* plaintiff, a former member of the Unification Church, brought a tort action against the Church alleging, inter alia, that he was subjected to brainwashing and that as a result thereof he suffered psychiatric disorders. In dismissing plaintiff's tort claims, the court stated: "Both of the plaintiff's claims in tort are seriously flawed. Indoctrination and initiation procedures and conditions of membership in a religious organization are generally not subject to judicial review [citations]. Similarly, the plaintiff has not indicated any precedent for recognition of the tort of brainwashing, and my research has revealed none." (*Lewis* v. *Holy Spirit Assn. for Unification*, *supra*, 589 F.Supp. at p. 12.)

In *Meroni*, the plaintiff's son entered the training and indoctrination program of the Unification Church; after one month he left the program and committed suicide. In an action against the Church plaintiff purported to state causes of action in tort contending that the decedent, an emotionally disturbed youth, was subjected to highly programmed behavior techniques (such as intensive physical exercises, isolation, lectures, confession, strict work and study schedules) as a result of which he was brainwashed. In dismissing the action the court opined that the indoctrination methods of the Church were not tortious. "The conduct of the defendant Unification Church . . . which the plaintiff seeks to classify as tortious, constitutes common and accepted religious proselytizing practices, e.g., fasting, chanting, physical exercises, cloistered

living, confessions, lectures, and a highly structured work and study schedule. To the extent that the plaintiff alleges that the decedent was 'brainwashed' as a result of the church's program, this claim must be viewed in the context of the situation as a whole, i.e., as a method of religious indoctrination that is neither extreme nor outrageous . . . ." (*Meroni* v. *Holy Spirit Assn. for Unification*, *supra*, 506 N.Y.S.2d at p. 177.) In finding the brainwashing nontortious in the absence of physical violence or mental torture, the court remarked: "It is important to note that no facts are set forth which would warrant the conclusion that the plaintiff's decedent was falsely imprisoned by the appellant or that he was subjected to any form of violence, or physical or mental torture, as such. The claim of *brainwashing* is based upon the activities heretofore described, which as previously noted, are *commonly used by religious and other groups, and are accepted by society as legitimate means of indoctrination. They are not classifiable as so* extreme or outrageous, or *offensive to society, as to incur liability therefor.*" (*Id.*, at pp. 177-178, emphasis added.)

In *Application of Conversion Center*, *supra*, 130 A.2d 107, the court recognized that persuasion is an integral part of many religious organizations and a positively protected aspect of the free exercise of religion: "The 14th Amendment of the Constitution of the United States which incorporates the First Amendment, guarantees the free exercise of religion . . . . Not only is a citizen of this country entitled to the free expression of his religious beliefs, but *he may by peaceful persuasion endeavor to convert others thereto*, and we are aware of no bar to individuals organizing to effectuate their guaranteed rights in this regard. . . Propagation of belief—or even of disbelief in the supernatural—is protected whether in church or chapel, mosque or synagogue, tabernacle or meetinghouse. . ." (*Id.*, at p. 110, emphasis added.)

(2) *The Conversion is Not Actionable*

The majority concedes that the free exercise clause of the First Amendment provides absolute protection for religious beliefs (*Cantwell* v. *Connecticut* (1940) 310 U.S. 296, 303-304); that the government cannot discriminate against individuals or groups because they hold views abhorrent to the authorities (*Fowler* v. *Rhode Island* (1952) 345 U.S. 67, 70); and that while the court can inquire into the sincerity of an individual's beliefs, it may not judge the truth or falsity of those beliefs (*United States* v. *Ballard* (1944) 322 U.S. 78, 86-88). However, the majority concludes that while religious belief is absolutely protected, religious conduct is not (*Sherbert* v. *Verner* (1963) 374 U.S. 398, 402-403; *People* v. *Woody* (1964) 61 Cal.2d 716, 718); that conduct even if religiously motivated is subject to regulation for the protection of society (*Cantwell* v. *Connecticut*, *supra*, 310 U.S. at p. 304); and that the Church's initial fraud which led to the brainwashing of appellants was conduct which, under the balancing test required by the First Amendment, can be penalized with tort sanctions based upon a compelling state interest (*Wisconsin* v. *Yoder* (1972) 406 U.S. 205, 214 221-235).

I respectfully submit that this reasoning is flawed. To begin with, the conduct which according to the majority constitutes a triable issue of fact is not only the initial fraud (an act clearly subject to proof), but also the subsequent "brainwashing" and conversion—matters comprising not only sociological or psychological phenomena, but also involving intangible elements of religious belief. It follows that brainwashing and conversion are so inextricably intertwined with religious faith that they cannot be scrutinized, much less proven, without questioning the authenticity of the religious teachings of the Church. (See detailed discussion, *infra*.) Such inquiry is absolutely proscribed by the free exercise clause of the First Amendment.

The proposition that the act or conduct of a religious organization or its members is immune from judicial scrutiny if the proof thereof calls into question the truth or falsity of religious faith is well established in case law as well as in legal commentary.

United States v. *Ballard*, *supra*, 322 U.S. 78, the leading case defining the parameters of the constitutional protection of religious faith, dealt with prosecution of religious fraud. Therein it was alleged that respondents, founders of the "I am" movement, fradulently represented that they were divine messengers; that they had miraculous powers to heal all diseases and, in fact, had cured hundreds of afflicted people; and that as a result of these misrepresentations, they obtained money from the public through the mail. The trial court excluded from jury consideration the issue of the truth or falsity of respondents' claim of divine designation and miraculous powers, and the case was submitted on the sole issue of whether respondents made those claims in good faith. In approving the trial court's ruling, the Supreme Court reasoned: "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. [Citation.] It embraces the right to maintain theories of life and of death and of the hereafter, which are rank heresy to followers of the orthodox faiths. Hersey trials are foreign to our Constitution. *Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.* Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of

prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. *Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.*" (*Id.*, at pp. 86-87, emphasis added.)

Another analogous case involving religiously motivated fraud is *Founding Church of Scientology* v. *United States* (D.C. 1969) 409 F.2d 1146. In *Founding Church*, appellants (Church of Scientology and its adherents) were charged with false and misleading labeling under the Food, Drug and Cosmetic Act (U.S.C., § 301 et seq.), based upon their representation that the Hubbard Electrometer (E meter) can cure both bodily and mental ailments.[1] The government seized the electric instruments and religious literature describing church doctrine and alleged that they were the instrumentalities by which the fraud was committed. At trial the government introduced

[1] Scientology teaches that by "clearing" or "auditing" the mind, one can improve both spiritual and bodily health. The E meter plays an essential role in the process of auditing. The vast literature describing scientology claims, inter alia, that many bodily ailments, including cancer, may be cured by auditing.

expert evidence showing that the E meter was of no use in the diagnosis and treatment of any disease or mental disorder (i.e., that the church's representations were false), and it also introduced thousands of pages of scientology literature relevant to the issue of mislabeling. Based thereon, the jury found appellants guilty of false and misleading labeling. The Court of Appeal reversed in concluding that under *Ballard* expert testimony was not admissible to disprove appellants' reprerentations and that the religious Scriptures of the church were not subject to courtroom evaluation. Significantly enough, the court noted: "The statements concerning the powers of auditing over the ills of mind and body are not readily separable from general statements of scientological doctrines concerning the nature of man and the relationship of his mind to his body. Many will find these doctrines, those which relate to health as well as those which do not, absurd or incoherent. But the *Ballard* case makes suspect the legal inquisition of such doctrines where they are held as religious tenets." (*Id.*, at p. 1159.)

Even more analogous to this case is *Katz* v. *Superior Court* (1977) 73 Cal.App.3d 952, in which the parents of Unification Church members brought an action for conservatorship: they claimed that their children were subjected to coercive persuasion and brainwashing through food and sleep deprivation, isolation, fear tactics, use of guilty feelings and indoctrination; they offered psychiatric and psychological expert evidence to establish such claims. The *Katz* court was unwilling to inquire into the merit of the assertions because it felt the evalution of evidence relevant to whether the change in the individual's life style was effected by brainwashing or religious faith, necessarily requires an investigation and questioning of the validity of that faith. (*Id.*, at pp. 987-988.)

The majority's effort to distinguish *Katz* from the case at bench is not persuasive. While *Katz* arose, indeed, in a somewhat different legal setting (i.e., the ac-

tion was brought by the parents rather than ex-church members; they were seeking conservatorship orders under Prob. Code, § 1751; and their purpose was to deprogram their children, etc.), the pivotal issue was the same: were the children brainwashed by the church and was their brainwashing subject to proof in a court proceeding?

I respectfully disagree with the majority's suggestion that the primary assertion here, as opposed to *Katz*, is the initial fraud in recruiting, and is therefore conduct which can be judicially scrutinized. From their language, however, it clearly appears that the wrongful conduct which is a the core of the controversy is the fraudulently induced brainwashing.[2] However, as the majority admits, the first part of the issue (i.e., the knowing representation of the Church's identity and the intent to induce appellants to participate in the Church's activities) is conceded by the Church. The remaining triable issue of fact is therefore limited to the alleged "brainwashing" which resulted in appellants' conversion and their joining the Church. What fact is it that the majority remands to be determined at trial? The same fact that *Katz* found immune from judicial scrutiny, i.e., was the conversion (or "brainwashing") induced by coercive indoctrination or by religious persuasion? That such question is not for mortal courts to resolve is unequivocally answered by *Katz*: No such proof or judicial inquiry is possible without questioning the person's underlying faith—an inquiry which is absolutely forbidden by the First Amendment.

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[2] In the words of the majority: "The legal question is simply whether a religious orrganization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to *coercive persuasion*" and "The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspected outsiders into its *highly structured environment*." (Emphasis added.)

The teachings of *Katz* that "brainwashing" and religious conversion are not really distingiushable; that the methods used in each are either identical or very similar; and that proof of the existence of each is virtually identical are well illustrated by the present case. The expert testimony here was offered to show that the brainwashing of appellants was achieved by "a systematic manipulation of social influences" which consisted mainly of the following: (1) control over the social and physical environment; (2) separation of the recruits from the outside world (including friends and family members); (3) influencing individual behavior through rewards, punishments and experiences; (4) oppression of criticism of the Church; and (5) attainment of a special uniform state of mind. However, as demonstrated below, all of these methods are used by the more widely accepted and/or tolerated churches in effecting religious conversion.

The effect of conversion, generally speaking, is spiritual rebirth—that is, attainment of a new life. The first step in that direction is a separation from the previous environment to a place where one can meditate and contemplate without distraction. Our world's numerous monasteries and convents demonstrate how retreat and isolation can promote single-minded devotion to God. The separation from friends and family members may be an important step in achieving this goal. Jesus Christ is quoted as saying: "He who loves father or mother more than mē is not worthy of me." (Matthew, 10:34-38.) The Mennonites likewise teach that true Christians must be prepared to take upon themselves the cross of Christ, and forsake father, mother, husband, wife, children, possessions and the self, for the sake of the testimony of His Holy Word when the honor and praise of God require it. (J. Wenger, *Glimpses of Mennonite History and Doctrine* (2d ed. 1947).) Although transcending one's family may be traumatic and painful, it is sometimes an essential ele-

ment in the pilgrimage of faith. The guilt and awareness of sin also may be an important factor leading to conversion. The promise of salvation and the threat of damnation are the very foundation of the life of the devout. Ascetic, regulated life, hard work, fasting and giving up earthly pleasures are also parts of many religious teachings aimed at spiritual purity and pleasing God. The dogmatic approach and intolerance of criticism are not uncommon with established religions which profess that divine truth is revealed in holy Scriptures, church dogmas and in *ex cathedra* declarations of anointed leaders (e.g., papal infallibility in the Catholic Church) which is not to be questioned by faithful followers. Finally, the introverted view forsaking interest in the outside world necessarily flows from the religious teaching that one must separate himself or herself from the world dominated by Satan and his evil forces in order to join and serve God's kingdom.

Indeed, what this expert evidence characterizes as indicia of brainwashing or mind control, might very well be equated with the more popularly accepted symptoms of genuine religious conversion. Religious behavioral change induced by the mystery of faith cannot be proved or disproved by secular science, which limits its scope of inquiry to tangible, rational and logical phenomena, comprehensible and explainable by human reasons. As Mr. Saphiro states in his essay: "Religious beliefs—whether held by adherents to new sects or by 'mainstream' believers—may not be dictated by societal norms. Such norms can easily encourage labels that transform religious beliefs into illnesses. 'A religion becomes a cult; proselytization becomes brainwashing; persuasion becomes propaganda; missionaries become subversive agents; retreats, monasteries, and convents become prisons; holy ritual becomes bizarre conduct; religious observance becomes aberrant behavior; devotion and meditation become psychopathic trances.'" (Saphiro, *Of*

Robots, Persons and Protection of Religious Beliefs, *supra*, 56 S.Cal.L.Rev. at pp. 1316-1317, fn. omitted.) A similar analysis has been advanced by Justice Jackson: "[religious] experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which wins on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him. . . . Prosecutions of this character easily could degenerate into religious prosecutions." (*United States* v. *Ballard*, *supra*, 322 U.S. at pp. 93, 95 [dis. opn. of Jackson, J.].)[3]

(3) *The Church's Conduct is not so "outrageous" as to be Subject to Governmental Regulation*

Case law teaches that overt acts or conduct connected with the exercise of religion are subject to governmental interference only if the conduct poses *substantial* threat to the public safety, peace or order. As the Supreme Court stated: "'*only the gravest abuses, endangering paramount interest* give occasion for permissible limitation.'" (*Scherbert* v. *Verner*, *supra*, 374 U.S. at p. 406,

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[3] The trial court granting summary judgment for defendants eloquently voiced this same concern: "The declarations of Dr. Singer and Dr. Benson reveal that both doctors rest their opinions in large part upon the view that Defendants' recruitment techniques involve 'systematic manipulation of social influences' which, both doctors conclude, lead Plaintiffs to make choices they would not have made in the 'free exercise of (their) own will and intellect.' But *these are not statements which are either true or false*; they are veiled value judgments concerning the entire outlook of the Unification Church. *What is 'systematic manipulation' to some may be the only true outlook to others.* . . . [¶] Testing the uncontroverted facts here by the principles applicable to regulation of acts of religious organizations and their members, as *Katz* requires, imposition of liability cannot be constitutionally counteranced." (Emphasis added, fns. omitted.)

emphasis added.) This was reiterated in *Wisconsin* v. *Yoder, supra*, 406 U.S. at p. 215: "Only those *interests of the highest order* and those not otherwise served can overbalance legitimate claims to the free exercise of religion." (Accord *Thomas* v. *Review Bd. Ind. Empl. Sec. Div.* (1981) 450 U.S. 707, 717-718, emphasis added.)

The majority opinion rests on a theory of fraudulently induced brainwashing. However, the conduct of "brainwashing" itself is not actionable because that method is commonly employed by religious groups, and it fails to constitute that outrageous conduct which goes beyond the limits of social toleration. (*Lewis* v. *Holy Spirit Assn., supra*, 506 N.Y.S.2d 174; see also *Christofferson* v. *Church of Scientology* (Ore. 1981), 644 P.2d 577, 584.) Thus, the critical issue is whether the act of brainwashing becomes tortious because it was preceded by the wrongful act of "heavenly deception" employed in recruiting.

It bears emphasis, and indeed the majority concedes, that the claimed deceptions, although secular on the surface, are clearly "rooted in religious belief." (*Wisconsin* v. *Yoder, supra*, 406 U.S. at p. 215.) It is settled that the Constitution guarantees not only the free exercise of religion, but also protects certain acts undertaken in furtherance of these religious beliefs. Included among these acts are the proselytizing and indoctrination activities of religious organizations. As explained in *McDaniel* v. *Paty* (1978) 435 U.S. 618, 626: "the right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar functions." *Turner* v. *Unification Church* (R.I. 1978) 473 F.Supp. 367 further teaches that indoctrination and the motivation of one who joins a religious group usually cannot be judicially scrutinized and that only "the 'operational activities' of a religion, those activities that are

not solely in the ideological or intellectual realm, [that] are subject to judicial review and may be regulated to achieve a sufficiently important state objective. [Citations.]" (*Id.*, at pp. 371-372.) The examples listed by the majority for the permissibility of government interference with religious affairs are consistent with *Turner* inasmuch as they all involve operational activities of the religious organization (i.e., law against polygamy, distribution of religious literature, compulsory vaccinations, license for religious parades, denial of tax exempt status, etc.), rather than intellectual or doctrinal matters, such as proselytizing and indoctrination.

Thus, a persuasive argument may be made that the principal wrong here claimed (i.e., "heavenly deception" in recruiting) is not subject to government intervention at all, because it includes doctrinal matters rather than operational activities. But even if we assume that such acts are purely "secular" in nature and may properly be regulated by government, they fail to amount to an abuse of such magnitude that would justify government interference under the strict balancing test prescribed by law. This is so because the First Amendment ensures wide protection for religious persuasion which may encompass not only exaggeration, but also outright falsehood. As stated in *Cantwell* v. *Connecticut*, *supra*, 310 U.S. at p. 310: "*In the realm of religious faith*, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. *To persuade others to his own point of view, the pleader*, as we know, at times, *resorts to exaggeration*, to vilification of men who have been, or are, prominent in church or state, *and even to false statement.* But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." (Emphasis added.)

In sum, I am firmly convinced that since "heavenly deception" and its ensuing "brainwashing," fail to constitute those gravest abuses, this court is powerless to impose tort sanctions thereon.

Finally, I find an additional reason for holding that imposition of tort sanctions is particularly inappropriate in the present instance. Case law emphasizes that only a compelling governmental interest supported by *ample evidence* can justify state regulation of religious practices. (*Wisconsin* v. *Yoder*, *supra*, 406 U.S. at pp. 215, 224-225.) In the case at bench, the State of California has made no claim that such governmental interest exists, nor has it enacted any statute or regulation purporting to restrict the practices at issue. When scrutinizing conduct which is ostensibly subject to constitutional protection and which can be regulated only by showing a compelling state interest, the judiciary should tread cautiously in independently *creating* such governmental interest without any prior consideration by the Legislature. The Legislature is far better equipped than this court to undertake the factual investigation and to formulate the social policies which justify restrictions on exercising religious freedoms. Indeed, in the overwhelming majority of cases courts have merely *upheld* state regulations curbing religious conduct rather than *creating* such regulation. The majority's creation of this new tort liability in such an historically heretofore sensitive area, without either legislative initiative or guidance, constitutes judicial activism of the first degree.

II. *Intentional Infliction of Emotional Distress*

The elements of a cause of action for intentional infliction of emotional distress are: (1) outrageous conduct by the defendants; (2) intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of the emotional distress.

(*Newly* v. *Alto Riviera Apartments* (1976) 60 Cal.App. 3d 288, disapproved on other grounds in *Marina Point, Ltd.* v. *Wolson* (1982) 30 Cal.3d 721, 740, fn. 9; Rest.2d Torts, § 46.) The conduct is deemed extreme and outrageous when "it exceeds all bounds of decency usually tolerated by a decent society, [and is] of a nature which is calculated to cause, and does cause, mental distress." (*Cole* v. *Fair Oaks Fire Protection Dept.* (1987) 43 Cal.3d 148, 155, fn. 7.) In order to successfully resist a motion for summary judgment the plaintiff must sustain each element of the cause of action; conversely, the defendant is entitled to summary judgment if proof of any one element is lacking. (*Sationers Corp.* v. *Dun & Bradstreet* (19650 62 Cal.2d 412, 417.)

Respondents herein contended that the emotional distress cause of action was inherently defective because the Church's conduct was not outrageous within the meaning of the law. The majority has rejected this argument by finding that the very same wrong (i.e., the fraudulent inducement of appellants into an atmosphere where they could be brainwashed), served as the foundation of both the fraud and the emotional distress causes of action because the conduct complained of was both extreme and outrageous. I respectfully submit that the conclusion of the majority is erroneous and unsupported by legal authorities.

As discussed above, appellants failed to state actionable wrong on the fraud count. A fortiori, the same allegedly fraudulent conduct cannot furnish the legal premise for the emotional distress cause of action.

But even if the fraud cause of action were valid, it would not, ipso facto, constitute outrageous conduct giving rise to recovery for causing severe emotional distress. The bootstrapping reasoning of the majority that the very same fraudulent conduct automatically produces a double cause of action (i.e., for fraud as well as for

intentional infliction of emotional distress) has been unequivocally rejected by persuasive case authorities.

For example, in *LeCruz* v. *Dean Witter Reynolds Inc.* (E.D. Ark. 1984) 585 F.Supp. 753, plaintiff brought an action for fraud and intentional infliction of emotional distress growing out of defendant's intentional misrepresentation and wilful concealment in connection with selling securities. The court rejected plaintiff's emotional distress claim by stating: "The Court recognizes that deception and fraud associated with the sale of securities can, on occasion, create emotional distress. Moreover, a broker's repeated use of such unsavory business methods purely in the pursuit of exploitation and financial gain can offend the conscience of the average citizen. *Yet . . . mere fraud in connection with the sale of securities does not ipso facto make out a prima facie case for intentional infliction of emotional distress. Unless the defendant's acts are truly outrageous, an action for intentional infliction of emotional distress will not lie.*" (*Id.*, at p. 766, emphasis added.)

In referring to Restatement Second of Torts section 46, comment d, the court emphasized that "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." (*LeCruz* v. *Dean Witter Reynolds Inc.*, *supra*, 585 F.Supp. at p. 764.)

In *Barrett* v. *Farmers & Merchants Bank* (Ala. 1984) 451 So.2d 257, plaintiff instituted an action against defendant bank and its vice president to recover damages for wantonness, outrage, fraud and conversion in connection with the payment of life insurance policy proceeds. In ruling against plaintiff, the court held that the tort of outrageous conduct was not established by a showing of mere fraud; rather, it should have been shown that defendant's conduct was such as not to be tolerated in a civilized society. (*Id.*, at pp. 263-264.)

In *Christofferson* v. *Church of Scientology, etc., supra*, 644 P.2d 577, a case factually close, plaintiff complained that defendant church took control of her mind and forced her into life service by way of fraudulent representations. In rejecting plaintiff's claim premised on intentional infliction of emotional distress, the court emphasized: "Plaintiff was recruited and indoctrinated into the Church of Scientology. That recruitment and indoctrination . . . were not so very different than might be used by any number of organizations. She joined the group voluntarily, albeit, as she claims, on the basis of misrepresentations made to her. However, she continued to participate and maintained her involvement for whatever reason within actionable threat or coercion by defendants." (*Id.*, at pp. 509-591.) "If misrepresentations were made regarding the benefits or nature of Scientology . . . her remedy would be for fraud, not outrageous conduct." (*Id.*, at p. 590.)

And finally, in *Meroni* v. *Holy Spirit Assn. for Unification, supra*, 506 N.Y.S.2d 174, the court was confronted with the nearly identical issue, i.e., whether brainwashing by defendant Unification Church constituted outrageous conduct rendering it liable for intentional infliction of emotional distress. In finding it did not, the court emphasized that no outrageous conduct has been presented inasmuch as "The plaintiff has failed to demonstrate that the recruitment and indoctrination techniques used by the appellant, which are similar to those used by a number of other organizations 'go beyond all possible bounds of decency, and [are] to be regarded as atrocious, and utterly intolerable in a civilized community' . . . ." (*Id.*, at p. 177.)

III. *Restition*

Finally, I find myself in profound disagreement with the reversal of summary judgment on the restitution count. The majority's ruling as to this issue rests on the theory of fraud (fraudulent inducement to facilitate

brainwashing) and undue influence.[4] However, neither of these theories support the cause of action at issue.

The uncontroverted evidence provided by Molko clearly demonstrates that he made the gift of $6,000 out of a then held religious belief. Thus, Molko explained that he gave the money to the church to please God, the Heavenly Father, and that he had not asked that the money be returned while a member of the Church, because he had been afraid of the evil forces and felt guilty of demanding back something he had given to God.[5] I quite agree with the trial court's finding: "Care-

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[4] The majority also mentions breach of confidential relationship by the Church as a potential basis for restitution. However, emphasis on the latter aspect does not add a new dimension to the cause of action because under well-settled law breach of fiduciary or confidential relationship is constructive fraud (i.e., a subspecies of fraud). (Code Civ. Proc., § 1573; *Damon* v. *Robert A. Klein & Co., Inc.* (1931) 111 Cal.App. 310, 315-316; *Barrett* v. *Bank of America* (1986) 183 Cal.App.3d 1362, 1369.)

[5] The pertinent part of the record reads as follows: Molko was told (and at that time he believed) that "The Heavenly Father is asking to help us . . ."; that "[y]ou are giving a benefit to God and he would look favorably on that"; "that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church . . ."; and "[t]hat you gave God money and then God, used your money rather than you using your money, and it worked better that way. In other words, you give your money to God and then God can distribute your money. And that way, the spiritual world can work for you."

The reason Molko did not ask for the return of his gift is reflected by the following excerpts: "Q. Did you ever feel that you should ask for the money back in order to— [¶] A. Yes, I thought about that. [¶] Q. But you never asked for it back. [¶] A. The situation was such that I—there was too much guilt and too much fear to ask. You just don't ask something like that. [¶] Q. What in particular were you afraid of happening if you did not—if you did ask for the money back? [¶] A. That something evil would happen to me. [¶] Q. You were afraid that by asking for your

ful review of Mr. Molko's deposition testimony negates the conclusionary allegations contained in the Complaint." Molko made his gift after careful consideration and consultation with one of the two Church members in whom he had the greatest confidence.[6] That he did not part with all his savings further negates the conclusionary allegations of undue influence in his complaint and undisputedly establishes the gift as a product of his free will.[7]

Since this gift was indisputably prompted by religious beliefs, and the issue of fraudulent inducement cannot be determined without inquiring into the truth or falsity of such beliefs, the theory of fraud as a ground justifying restitution cannot be judicially entertained without transgressing the free exercise clause of the First Amendment. (See detailed discussion, *supra.*) This same reasoning is equally applicable to the undue influence theory of recovery; as with the theory of fraudulent inducement, it is so intricately interwoven with religiously held beliefs that it cannot be proven without questioning the verity of underlying religious doctrines. (*Estates of Supple* (1967) 247 Cal.App.2d 410.)

That civil courts may not entangle themselves in religious disputes arising between disgruntled ex-church

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money back from the church, that something evil— [¶] A. No, not something— [¶] Q. —would happen to you? [¶] A. You see, some evil force. You have to understand, I really believed that there was evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had supposedly given to God."

[6] He testified that she told him she "thought I should do what I thought was best' and "was pretty much leaving it up to me."

[7] When referring to the several thousand dollars which were available to him and which he did not disclose to Church members, he stated, "I drew the line. . . . They were quite under my control, but they stayed where they were."

members and the Church, is well supported by case law as well as by legal scholars. In *Wilson* v. *Jones* (1872) 80 U.S. 679, 731, the United States Supreme Court emprasized: " 'the judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they become members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals.' " In *Founding Church of Scientology* v. *United States*, *supra*, 409 F.2d 1146, speaking to the same issue, the court stated: "under *Ballard* it seems unlikely that a disgruntled former adherent could sue a church for fraud and deceit because it had collected money from him on the basis of allegedly 'false' doctrines . . . ." (*Id.*, at p. 1156, fn. 32.)

Estate of Supple, *supra*, 247 Cal.App.2d 410, 414, reaffirms that religious gifts made to a church cannot be set aside by a court on the grounds of fraud or undue influence because the entertainment of such issues is foreclosed by the constitutional guarantees of religious freedom contained in the First Amedment and applied in *Ballard*.[8]

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[8] I disagree with the position of the majority that the complaint in *Estate of Supple* was not based upon fraud and undue influence; it clearly was. That opinion states: "It was also alleged that all of the above representations [i.e., that there are Heaven and Hell, eternal award and punishment depending on earthly conduct, etc.] were in fact false and untrue, constituting childish superstitions incompatible with man's advanced position in science and technology, and that *the charitable beneficiaries who made these representations were guilty of unduly influencing the testator and were also guilty of fraud* because they had made positive assertions which, although they believed them to be true, were not warranted by the information which they had (Civ. Code, 1572, subd. 2) and because they had breached a duty which, without an actually fraudulent intent, gained them an advantage by misleading the

Finally, Professor Tribe, a highly respected constitutional scholar, fearing entanglement with church affairs, expressed his concern thusly: "Once it is conceded that first amendment values are unacceptably compromised when civil courts undertake to settle religious issues, it becomes clear that allowing a legal determination about property or some other secular matter to turn on a court's answer to a religious question represents a path fraught with peril: the path is one along which unsatisfied former believers could drag the civil courts into the theological thicket by the simple expedient of suing for a refund of their prior donations to a religious organization. . . . The same is true when a church contributor seeks return of a donation on the ground that the religious beliefs inducing the contribution were false; once we assume that the underlying dispute is properly characterized as religious, the suit for a refund becomes a transparent vehicle for invoking governmental assistance to benefit one side in a religious conflict at the expense of the other, something the establishment clause plainly forbids." (Tribe, American Constitutional Law (1988) § 14-11, p. 1235.)

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testator to his prejudice and the prejudice of his heirs at law (Civ. Code, § 1573, subd. 1). . . . [¶] In this state of the case, *the beneficiaries* under the will *moved for judgment on the pleadings* against Smith *as to the fraud and undue influence counts* of his pleading, and against Hallinan as to his entire pleading. *On the same day, the beneficiaries also moved to strike the* Hallinan pleading and the *fraud and undue influence counts* of the Smith pleading. [¶] In due time the matter was heard and in ruling upon the matter, *the court* filed a memorandum opinion in which it *stated that the gist of the fraud and undue influence counts of the two pleadings was that the charitable beneficiaries named in the will had influenced the making of the will* by teaching the testator certain religious beliefs *which were in fact untrue* and which they had no reason to believe were true. . . ." (*Id.*, at pp. 412, 413, emphasis added.) Since the cited excerpts of the opinion clearly indicate that *Estate of Supple was* decided upon fraud and undue influence, it is not only relevant, but extremely persuasive.

Members of this court may detest the practice of heavenly deception. We may abhor the results of the Church's selective (and successful) proselytization. We may condemn such practices as destructive of the integrity of the family.[9] Yet, as judges we must resist the temptation to tread into this theological thicket. For it is neither for governments, nor their instrumentalities, the courts, to divine the truth of those teachings. That is the law to which we are all bound.[10] I am satisfied that both the Court of Appeal and the trial court before it have correctly found the law and applied it to these appellants. Therefore, I would affirm the trial court's grant of summary judgment on the fraud, emotional distress and restitution counts.

ANDERSON, CARL WEST, J.*

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[9] The Court of Appeal said it best: "The beguiling and very intensive recruiting methods of the Unification Church, which appear primarily directed at those young people who are most emotionally impressionable and vulnerable, seem objectionable to us, as doubtless they do to most disinterested observers."

[10] See Justice Mosk's eloquent concurring opinion affirming this principle when he voted to uphold the constitutionality of the death penalty, *People* v. *Anderson* (1968) 69 Cal.2d 613, 634: "As a judge I am bound to the law as I find it to be and not as I might fervently wish it to be."

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chairperson of the Judicial Council.

MOLKO and LEAL

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*

S.F. 25038

Counsel for Parties:

For Appellant (Molko) and Respondent (Maxwell):	Ford Greene, Esq. 711 Sir Francis Drake Blvd. San Anselmo, CA 94960-1949 (415) 258-0360
For Appellant (Holy Spirit Association):	Jeffrey S. Ross, Esq. Friedman, Sloan & Ross, P.C. One Maritime Plaza, Suite 1040 San Francisco, CA 94111-3413 (415) 788-2200
For Appellant (Leal):	Stanley F. Leal, Esq. Kelly, Leal, Olimpia, Davilla & Whelan 697 East Remington Dr. Sunnyvale, CA 94087 (408) 735-8530
Trial Court & No.:	Superior Court of San Francisco County No. 769-529
Trial Judge:	Hon. Stuart R. Pollack

APPENDIX B

CALIFORNIA COURT OF APPEAL
FIRST DISTRICT
DIVISION TWO

Nos. A025338, A020935

DAVID MOLKO,
Plaintiff-Cross-Defendant and Appellant;

TRACY LEAL,
Plaintiff and Appellant,

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants, Cross-Complainants and Appellants;

NEIL MAXWELL, *et al.*,
Cross-Defendants and Respondents.

[Mar. 31, 1986]

Kelly, Leal & Olimpia and Stanley F. Leal for Plaintiffs, Cross-defendant and Appellants.

Friedman, Sloan & Ross and Jeffrey S. Ross for Defendants, Cross-complainants and Appellants.

Shapiro & Shapiro, Carl B. Shapiro and Alysworth C. Green for Cross-defendants and Respondents.

OPINION

KLINE, P. J.—These cases present two general questions: (1) whether, consistent with the free exercise clause of the First Amendment, former members of a religious organization can maintain causes of action against that organization for fraud and deceit, intentional infliction of emotional distress and false imprisonment and can claim restitution for financial contributions made to the organization; and (2) whether the religious organization can maintain a cross-complaint against a former member and other persons for violation of its civil rights under federal and state statutes.

These appeals arise out of one action in the superior court and have been consolidated on this court's own motion for decision herein. In No. A025338 plaintiffs David Molko and Tracy Leal appeal from a summary judgment in favor of defendants Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc. (hereafter collectively referred to as "the Unification Church" or "the Church").[1] Also in No. A025338, the Unification Church cross-appeals from a judgment of dismissal entered after the sustaining of a demurrer without leave to amend as to its amended cross-complaint against Molko. In No. A020935, the Unification Church appeals from a judgment of dismissal entered after the sustaining of demurrers without leave to amend as to its amended cross-complaint against cross-defendants Neil Maxwell and Joseph Alexander, Sr.

We conclude that the court below properly granted summary judgment in favor of the Unification Church on the

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[1] While these two organizations are apparently separate entities, differentiation between them is unnecessary for purposes of these appeals.

complaint and affirm that judgment. We also conclude, however, that the trial court erroneously sustained the demurrers to the Church's cross-complaint against Molko, Maxwell and Alexander without leave to amend. Consequently, we reverse the judgments of dismissal entered in favor of those parties.

I. Introduction

Molko and Leal are former members of the Unification Church, a religious organization which follows the teachings of the Reverend Sun Myung Moon.[2] While members of the Church, they were on separate occasions forcibly abducted from public streets by third parties and persuaded to relinquish their belief in and association with the Church. Thereafter, on July 25, 1980, they filed the instant complaint, alleging that they had been fraudulently induced to join the Unification Church through a variety of deceptive tactics on the part of some of its members. Plaintiffs each asserted causes of action for fraud and deceit, intentional infliction of emotional distress and false imprisonment. Molko also alleged a cause of action for restitution of a $6,000 gift assertedly obtained by the Church through the exertion of undue influence.[3]

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[2] The Unification Church "is one of more than 120 national Unification Churches throughout the world propagating a common religious message under the spiritual guidance of the Reverend Sun Myung Moon, the Unification movement's founder and prophet. The Church was organized as a California nonprofit corporation in 1961, and since 1975 has maintained its headquarters in New York City." (*Holy Spirit* v. *Tax Comm.* (1982) 55 N.Y.2d 512, 519 [450 N.Y.Supp.2d 292, 435 N.E.2d 662].) The Church's description of its history, doctrine, dogmas and teachings is set forth in the opinion just cited at pp. 524-525.)

[3] The complaint set forth additional causes of action which were abandoned prior to the entry of judgment and have no relevance on appeal.

On April 7, 1982, the Church filed a first amended cross-complaint against Molko, Maxwell and Alexander, as well as against other cross-defendants not involved in these appeals. The cross-complaint was based essentially upon what the Church refers to as "deprogramming" activities, the conspiring to kidnap and actual kidnap of members of the Church by nonbelievers for purposes of forcing those members to abandon their religious beliefs and to terminate their association with the Church. Claims for violation of the civil rights of the Church and its members were asserted against all three of these cross-defendants under federal and state civil rights statutes. (42 U.S.C. § 1985(3); Civ. Code, §§ 51.7 and 52.) Additionally, a claim for full or partial indemnity was asserted against Maxwell, alleging that any damages for which the Church were liable to Molko had been caused, in whole or in part, by Maxwell, who had kidnapped and "deprogrammed" Molko.

II. The Appeal of Molko and Leal from the Grant of Summary Judgment to the Church.

On May 26, 1983, the Church filed a motion for summary judgment or, in the alternative, for summary adjudication of issues as to plaintiff Leal, and filed a separate similar motion as to plaintiff Molko. Insofar as relevant to the present appeal, the Church urged in support of its motions that plaintiffs had not relied upon any misrepresentations of Church members which proximately resulted in any damage of which plaintiffs complained; that any misrepresentations or failure to disclose Church members' religious affiliation, or other conduct of which plaintiffs complained, was protected by the First Amendment and could not form the basis of a claim for fraud or intentional infliction of emotional distress; that the conduct alleged in support of the claim for emotional distress was not outrageous; that plaintiffs had not been subject to any involuntary confinement which would sup-

port a claim for false imprisonment; and that plaintiffs consented to participate in all conduct which they claim caused them distress or damage. Additionally, as to plaintiff Malko, the Church urged that his claims for fraud and intentional infliction of emotional distress were barred by the statute of limitations; and that the Church was entitled to judgment on his claim for restitution of a gift because the evidence demonstrated that he made the $6,000 contribution because of his then existing religious beliefs.

Although Molko and Leal purport to argue in their briefs that the trial court erred in granting summary judgment because there are triable issues of fact as to each cause of action, the record and briefs herein demonstrate that, with a minor exception which we deem immaterial (see *infra*, p. 6, fn. 5), the facts regarding the occurrences giving rise to this law suit are essentially undisputed for purposes of the motion for summary judgment.[4] It is, rather, the legal consequences flowing from those facts which are in dispute. We will summarize the facts with respect to each plaintiff separately.

Facts as to Plaintiff David Molko

David Molko arrived in San Francisco in December 1978. A 27-year-old graduate of Temple University School of Law, he had recently taken and passed the July 1978 examination for admission to the Pennsylvania bar. He had come to San Francisco thinking that he

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[4] In its brief, the Church noted this lack of dispute as follows: "The facts set forth are appellants' version of the events which must necessarily be accepted for purposes of summary judgment. Had the matter gone to trial, respondents would have vigorously contested many of these suppositions[;] however, as the [trial] court concluded, even on the appellants' version of the facts, no viable causes of action could be stated." The facts before the trial court at the time of the hearing on the motion for summary judgment were supported by declarations and references to extensive discovery responses.

might try to find a job or take the California bar examination. He was quite uncertain about his future at that time.

In January 1979, Molko was approached by Mark Bush and Ernest Patton at a bus stop in San Francisco. They told him they were involved with a group called the Creative Community Project which was interested in certain environmental issues. When Molko inquired about the associational ties of the group, he was told it was composed of an "international community of professionals who lived together and often discussed world events and topics of interest to the community. Molko asked whether the group had any religious affiliation and was told that it did not. Bush and Patton invited Molko to dinner that evening at the group's house on Bush Street in San Francisco.

Molko attended the dinner, where there appeared to be a number of guests such as himself. Molko was not allowed to have any conversation with the other guests and was spoken to constantly by members of the group during dinner and after a lecture that followed. After viewing a slide show of a farm in Booneville apparently operated by the group, he was invited to spend a weekend there and was told a bus was leaving that evening. Molko was interested and agreed to go. Prior to boarding the bus to Booneville, Molko signed a form, setting forth his name, address and telephone number.[5] At Booneville Molko learned that the group derived its teachings from the Reverend Sun Myung Moon and many other different philosophers. There was at that time no mention of the Unification Church or "Moonies." Molko was at all times free to leave Booneville and knew that buses returning to

[5] The Church claims that this form identified the program at Booneville as being associated with the Unification Church, while Molko claims that it did not. Due to the conclusions which we reach in this opinion, this factual dispute is immaterial to the Church's entitlement to summary judgment.

San Francisco left daily. He saw no evidence that anyone else was being restrained at Booneville against his or her will.

During the week of January 29, 1979, Molko visited another group site known as "Camp K." It was during this visit that Molko first learned that his new associates were all followers of the Unification Church and Reverend Moon. He nevertheless remained with the organization. Molko spent approximately five to seven weeks at Camp K. He was not pysically restrained there and knew he was free to leave.

Thereafter Molko returned to San Francisco and participated in Church activities such as fundraising and "witnessing" (recruiting new persons to join the Church). On April 6, 1979, Molko made a donation of $6,000 to the Church. At Church expense, Molko attended a bar review course at Hastings Law School. He took the California bar examination in July 1979. On July 26, 1979, upon leaving the last session of the bar examination, Molko was forcibly abducted by two persons and persuaded to relinquish his belief in the Church. His association with the Unification Church terminated at that time.

Facts as to Plaintiff Tracy Leal

On or about June 7, 1979, Tracy Leal, then 19 years of age, was traveling by bus from her home in Santa Clara County to visit Humboldt State University, where she was considering enrolling as a student. This trip required a bus transfer in San Francisco. While at the San Francisco bus depot, Leal was approached by a Unification Church member named Collette Zielinski, who said she was waiting for a friend arriving from Switzerland. Leal remarked that she loved to ski and had always wanted to go to Switzerland. Zielinski said her friend was a skier and suggested Leal might want to meet her.

Leal and Zielinski were then joined by another Unification Church member, Bradford Parker. Zielinski and

Parker told Leal about the house in San Francisco where they lived with a group of people calling themselves the Creative Community Project who engaged in various good works, such as providing food to the poor. Leal asked Zielinski and Parker if this group were "some religious thing" and told them that if it were she did not want to get involved. Parker responded that members of the group "all come from different religious backgrounds."

Leal accepted an invitation to dinner that evening at the Bush Street house. After the meal she listened to a lecture and viewed a slide show of a farm in Booneville. The Creative Community Project was the only organization identified that evening. Neither the Unification Church nor Reverend Sun Myung Moon were mentioned.

At the end of the evening Leal accepted an invitation to attend a weekend "seminar" at the Booneville farm. Like Molko, she signed a form prior to the trip to Booneville which she asserts contained no mention of the Unification Church. Although the seminar was to be held over the entire weekend, Leal was told she could return to San Francisco at any time.

On her second day at Boonesville, Leal asked a co-director named Joshua whether the group was the "Moonies." He responded "No, but we are a form of Christian group, but we don't really want to drive anyone away. So we are trying not to scare people away who might not be Christians. So we are just kind of keeping quiet about it for a while."

On or about June 11, 1979, Leal visited another Northern California encampment of the group, known as "Camp K," with several people from Booneville. On or about June 24, while at Camp K, Leal again inquired whether members of the group were "Moonies" and was told that they were not. Later that evening, Parker Zielinski and another woman told Leal that the group did follow some of the teachings of Reverend Moon.

On June 29, 1979, Leal was finally informed of the true nature of the organization. She was told that group members belonged to the Unification Church and followed the teachings of Reverend Moon. Leal did not seek to leave the group upon learnings these facts.

On approximately September 1, 1979, Leal flew with other Church members to Boulder, Colorado, where she spent the next month attending lectures, hiking and praying. From there she went to Los Angeles where she engaged in fundraising by soliciting contributions door-to-door. She usually engaged in this activity alone, voluntarily returning at the end of each day to the Church facility where she was living. On or about October 29, 1979, Leal was abducted from a street in Los Angeles by persons hired by her family and was persuaded to abandon her faith in the Church. Leal's association with the Unification Church terminated at that time.

A. Fraud and Deceit

With respect to their claims for fraud and deceit, Molko and Leal each alleged, in essence that specified members of the Unification Church, knowing the falsity of their representations, told them that meetings to which they were invited were with a group of community-minded persons who maintained a farm near Booneville for recreational purposes. The true facts were that the initial meetings each plaintiff participated in were with members of the Unification Church and were for the purpose of isolating and indoctrinating newly recruited persons. Plaintiffs did not learn that defendants were attempting to induce them to join the Unification Church until the indoctrination program had effectively commenced. As a result of defendants' fraud and deceit, plaintiffs were induced to join the Church and work long hours to further its purposes without material recompense. Had plaintiffs known the actual facts, neither would have accepted invitations to the initial meetings,

attended the farm in Booneville, or joined the Unification Church.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Due to the "drastic nature of the procedure and the importance of safeguarding the adverse party's right to a trial, the moving party must make a strong showing." (6 Witkin, Cal. Procedure (3d ed. 1985) (Proceedings Without Trial, § 285, p. 585.) "In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deductible from such evidence, except summary judgment shall not be granted by the court based on inferences reasonably deductible from such evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact." (Code Civ. Proc., § 437c, subd. (c).[6]) We examine the trial court's grant of summary judgment on plaintiffs' causes of action for fraud, and all other causes of action, bearing this standard in mind.[7]

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[6] The word "deducible" was substituted for the word "deductible," which appeared in the statute at the time defendants' motion for summary judgment was made, by a 1983 amendment to Code of Civil Procedure section 437c, subdivision (c). That amendment is obviously without substantive significance.

[7] The Church argues that, pursuant to *Reader's Digest Assn.* v. *Superior Court* (1984) 37 Cal.3d 244 [208 Cal.Rptr. 137, 690 P.2d 610], summary judgment should be deemed a "favored remedy" and viewed under a standard more favorable to the Church in this case because it involves the exercise of First Amendments rights. That such support can be found in *Reader's Digest* is questionable since the California Supreme Court was there concerned only with "defamation cases involving the issue of 'actual malice' under the *New York Times* standard", which requires proof by clear and

"The elements of fraud, which give rise to the tort action for deceit, are (1) misrepresentation (false representation, concealment or non-disclosure); (2) knowledge of falsity (or 'scienter'); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage." (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 446, p. 2711, and authorities there cited.) With respect to the element of justifiable reliance, it must be shown that the misrepresentation or nondisclosure was " 'an immediate cause of [the plaintiff's] conduct which alters his legal relations,' " and that without such representation " 'he would not, in all reasonable probability, have entered into the contract or other transaction.' " (*Id.*, at § 472, p. 2732, quoting *Spinks v. Clark* (1905) 147 Cal. 439, 444 [82 P. 45].)

Molko and Leal insist that, with respect to their claims of fraud and deceit, "the central issues of fact" that remain to be reviewed are the truth or falsity of the representations made to them by members of the Unification Church and the intent of those who made the representations. We cannot agree. Though it ultimately ruled against them, the trial court resolved these questions in favor of plaintiffs either explicitly or by necessary implication. Thus, the trial court agreed that members of the Church "did not originally disclose that they were affiliated with the Unification Church or Reverend Moon, and there is evidence that they affirmatively misrepresented that fact, particularly to Ms. Leal." The record also clearly demonstrates that, as Molko and Leal contend, the misrepresentations were made to induce plaintiffs to associate with their recruiters, who feared

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convincing evidence rather that a preponderance of evidence. (*Id.*, at p. 252.) In any event, we need not reach this issue here since we determine that pursuant to the traditional standard the trial court properly granted summary judgment with respect to all causes of action.

plaintiffs would reject their overtures if their affiliation with the Unification Church or Reverend Moon were first made known.

The only genuine issue with respect to the claims of fraud and deceit is whether there is a triable issue of fact as to whether Molko and Leal justifiably relied upon the false representations initially made to them. We agree with the trial court that this question does not present a triable issue of fact.

Preliminarily, the evidence is uncontroverted that within two or three weeks of their first contact with the group initially identified as the Creative Community Project, and before formally joining the Unification Church and engaging in its work, both Molko and Leal were informed of its affiliation with Reverend Moon. Neither sought to leave the Church and both remained active in Church affairs long after becoming familiar with Reverend Moon's teachings.

Plaintiffs endeavor to avoid the seemingly fatal consequences of these undisputed facts by alleging that during the brief period before the truth was revealed to them agents of the Church had gained control of their minds, thereby rendering them incapable of resisting the inducements to join the Church and work diligently to further its purposes. Plaintiffs contend, in other words, that they justifiably relied on representations they knew to be untrue because those who made the false representations first stripped them of independent judgment. This theory, which is central not only to plaintiffs' cause of action for fraud and deceit but, as we shall see, to the remaining causes of action as well, rests entirely on the declarations of Dr. Margaret Singer, a psychologist, and Dr. Samuel Benson, a psychiatrist.

Dr. Singer states in her declaration that she had interviewed approximately 260 persons who were or had been connected with the Unification Church of Sun Myung

Moon, which she identified as a "cult." [8] She found a striking resemblance between the methods of recruitment and control used by "the cults" and those used on some Americans imprisoned during the Korean War whom she had also interviewed. According to Dr. Singer, recruiters for the Unification Church engage in "systematic manipulation of the social influences" surrounding the potential recruit to the extent that the recruit loses the capacity to exercise his or her own free will and judgment.

Dr. Singer examined both Molko and Leal in connection with their recruitment and indoctrination into the Unification Church, and their experiences with "that cult." She found that the deceptive practices for both recruitment and "psychological confinement" of Molko and Leal were typical of those systematically utilized by the Unification Church. As a result of the "tremendously sophisticated" indoctrination techniques employed by Unification Church members, Molko and Leal were both assertedly rendered incapable of exercising their own will and judgment and were unable to respond to the fact that they had been deceptively recruited by "Moonies," with whom they would not otherwise have freely associated. Dr. Singer further found that Molko and Leal each suffered emotional distress as a result of being manipulated and as a result of the fact that they complied with the requirements placed upon them to deceive others in either fund-raising or recruitment activities on behalf of the Unification Church. Dr. Singer did not specify what factual information obtained from Molko and Leal led her to reach these conclusions.

Dr. Benson. in his declaration, stated that he had treated a significant number of patients suffering from psychological disorders secondary to their connection with

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[8] The "distinguishing criteria" of "cults" set forth by Dr. Singer are described *infra* at footnote 12.

"various cults," such as the Unification Church. He stated that he had found the recruitment and indoctrination methods of the Unification Church—which he, like Dr. Singer, described without elaboration as "the systematic manipulation of social influence[s]"—frequently result in the recruit being "persuasively coerced" into actions and activities in which he would not engage in the free exercise of his own will and intellect. Dr. Benson further stated that studies of methods employed by Chinese communists under Mao tse-tung reveal indoctrination techniques substantially similar to those used by the Unification Church and other cults.

Dr. Benson, who also interviewed Molko and Leal, found both to be so effectively coerced by the systematic manipulation employed as to be under control of their recruiters. He concluded that they were rendered incapable of exercising their own will and judgment by the time they learned that their recruiters were acting on behalf of the Unification Church. Dr. Benson also concluded that Molko and Leal had both lost the judgment capacity to leave the Church and suffered emotional distress as a result of the methods employed by their recruiters. Like Dr. Singer, Dr. Benson did not indicate what, if any, specific factual information obtained from Molko and Leal supported his conclusions.

The trial court refused to permit the foregoing expert testimony to be used to establish any triable issue of fact.

Among other things, the court found that the testimony of Dr. Singer and Dr. Benson conflicted with that of plaintiffs themselves with respect to the significance of the Church's initial deception. Thus, in a lengthy order granting summary judgment, the court specifically found that the misrepresentations of the Church and its failure to at first disclose its affiliation with Reverend Moon "cannot be deemed material or to have induced either Plaintiff reasonably to have relied upon them.

Plaintiffs' own testimony eliminates any triable issue of fact in this regard." Referring to the testimony of plaintiffs at deposition, the trial court observed that, "[b]y their own admissions, Plaintiffs agreed to join the group because their association satisfied personal concerns and anxieties both were experiencing." The admissions that they joined the group for reasons which were not dependent upon its formal affiliations were buttressed, the court found, by the fact that "when [plaintiffs] learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew they might have done so. Their actions reflect that it was not their unawareness of defendant's affiliation that caused them to stay."

The trial court refused to permit plaintiffs to rely on the opinions of Dr. Singer and Dr. Benson not only for the foregoing evidentiary reasons,[9] but as well on constitutional grounds. In this latter regard the trial court relied upon *Katz* v. *Superior Court* (1977) 73 Cal.App. 3d 952 [141 Cal.Rptr. 234].

In *Katz*, the Court of Appeal was confronted with the testimony of a psychiatrist and a psychologist, very similar to that presented here, seeking to establish that the Unification Church engaged in "coercive persuasion" or "brainwashing" to gain the allegiance of recruits to the Church. In that case, parents of five young adult members of the Church had obtained orders from the superior court appointing them temporary conservators of the

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[9] In addition to finding that the opinions of the two experts conflicted with plaintiffs' own testimony, the trial court also noted that: "Both doctors examined the Plaintiffs long after the events in question. They did not reach their opinions concerning Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them."

persons of their children. The parents contended their children had been subjected to "coercive persuasion" through methods such as "[f]ood deprivation: sleep deprivation; isolation; the use of fear tactics; the use of guilt feelings; and indoctrination." (*Id.* at p. 972.) The *Katz* court was unwilling to inquire into the merits of these assertions, reasoning that "[w]hen the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith? At the same time the trier of fact is asked to adjudge the good faith and bona fideness of the beliefs of the conservatees[']] preceptors. If it be assumed that certain leaders were using psychological methods to proselytyze [*sic*] and hold the allegiance of recruits to the church or cult, call it what we will, can it be said their actions were not dictated by faith merely because others who engaged in such practices have recanted?'" (*Id.*, at pp. 987-988, fn. omitted.)[10]

In overturning the orders appointing conservators, the *Katz* court concluded that in the absence of actions rendering the adult believers "gravely disabled," as defined by statute,[11] the processes of the state could not be used to interfere with the acts of the Church and its members without impinging upon the First Amendment right to free exercise of religion. (*Id.*, at pp. 988-989.)

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[10] We do not understand this statement to mean that a court cannot under any circumstances pass on the question of whether members of a religious organization honestly and in good faith believed assertedly fraudulent representations. Such a judicial inquiry can be undertaken to the extent that the truth of religious doctrines or beliefs is withheld from the trier of fact. (*United States* v. *Ballard* (1944) 322 U.S. 78 [88 L.Ed. 1148, 64 S.Ct. 882].)

[11] See Welfare and Institutions Code section 5008, subdivision (h), defining "gravely disabled" as, inter alia, a condition in which a person is unable, as a result of a mental disorder, to provide for his basic personal needs for food, clothing and shelter.

Molko and Leal seek to distinguish *Katz* on several grounds. They emphasize, first, that in *Katz* the individual right to religious freedom was asserted by then members of the Unification Church, not by the Church itself, and that *Katz* therefore does not speak to the ability of the Church to utilize the free exercise clause to prevent former members from subjecting its acts to judicial scrutiny. It is additionally contended that the holdings of *Katz* should be limited to the context of conservatorship proceedings because the "gravely disabled criteria" set forth in the Welfare and Institutions Code were central to the decision in that case. We are unimpressed by these efforts to constrain the meaning of *Katz*. Although, to be sure, it was the "recruits" who in that case sought to protect the right to religious freedom while here it is the "preceptors" who advance that right, the applicable principles are the same. Those fundamental principles are by no means limited to the unique facts of *Katz* or to conservatorship proceedings.

The trial court correctly discerned that the analysis in *Katz* is pertinent to the determination whether, consistent with the free exercise clause of the First Amendment, the indoctrination methods of the Unification Church (described in *Katz* as "coercive persuasion" and here as "the systematic manipulation of social influences") may be the subject of judicial scrutiny; that is, whether the methods assertedly employed by the Church to induce submission to its precepts are within the domain of religious belief, and therefore immune from scrutiny, or instead represent a form of action that may be restricted by the courts. As we have noted, the court in *Katz* held that evidence that healthy adults were induced to join the Church and to change their life style as a result of "brainwashing" rather than by religious faith could not be considered because the evaluation of such evidence necessarily requires the exercise of judgment as to the validity of that faith. (*Id.*, at pp. 987-988.)

The evidence proffered in the instant case presents precisely the same problem. Pejoratively characterizing the Unification Church as a "cult," [12] and suggesting that its purposes are not authentically religious,[13] plaintiffs' experts essentially seek to establish that the "tremendously sophisticated" indoctrination techniques employed to induce Molko and Leal to join the Unification Church de-

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[12] According to Dr. Singer, the "distinguishing criteria" of "cults" are the following: "Cult leaders are self-appointed messianic persons who claim to have special missions in life, which they claim have been given to them because they are unique. The veneration of the group form is directed toward the leader rather than toward God or abstract principles such as might be done in other kinds of organizations. Usually the cults have a double set of ethics in that a cult member is open and honest within the cult but learns that it is all right to deceive non-members. . . . [¶] The cults tend to be authoritarian in their power structure, in contrast to the wider society of democracy in which we live. Cults also tend to be totalistic in the sense that they prescribe down to the tiniest detail how one should communicate with other members in the groups, non-members, the precise activities in which they should engage, etc."

It deserves to be noted that there is disagreement about the proper definition of the religious "cult" among many who have studied the phenomenon from a scientific perspective. (Compare, e.g., Stark & Bainbridge, *Of Churches, Sects and Cults: Preliminary Concepts for a Theory of Religious Movements*, 18 Jour. for the Sci. Study of Religion 117 (1979) and Martin, A Definition of Cult: Terms and Approaches, in Fichter (ed.) Alternatives to American Mainline Churches (1983) pp. 27-42.) Moreover, "not all religious scholars or psychologists agree with popular writers that cults always have had unwholesome effects on their members." (Pavlos, The Cult Experience (1982) p. 4; see also Shupe & Bromley, The New Vigilantes: Deprogrammers, Anti-Cultists, and the New Religions (1980).) In any event, as a noted sociologist has pointed out, the "cult" remains a "vague and unsatisfactory concept." (Eister, Culture Crises and New Religious Movements: A Paradigmatic Statement of a Theory of Cults, in Zaretsky & Leone (eds.) Religious Movements in Contemporary America (1974) p. 613.)

[13] Dr. Singer declares that "usually" the "only two real purposes" of cults are "fundraising and recruiting other members."

stroyed their capacity to exercise free will and judgment. However, the scientific perspective of plaintiffs' experts ignores the religious aspect of the Church's teachings and the spiritual nature of its hold on its members. To this extent, the evidence supplied by these experts disregards the testimony of plaintiffs themselves and is incompatible with plaintiffs' position in this lawsuit. Molko and Leal not only concede "the bona fides of the Unification Church's religious beliefs," [14] but acknowledge that, like other members of the Church, they sincerely adopted those beliefs. Additionally, plaintiffs effectively concede the religious character of the alleged misrepresentations. Thus, for example, Leal testified during discovery that she "believed that Moon was the Messiah and in some manner it was important to unite with him; and if the only way to do that was to join the Church, fine, do it, and it's worth any deceit that had to be spoken or done." Plaintiffs' experts may not be permitted to isolate certain representations of the Church and treat them as nonreligious; for in determining whether allegedly fraudulent statements made by representatives of religious bodies are entitled to the protection of the First Amendment the statements must be viewed in the light of the doctrines of that religion. (*Christofferson* v. *Church of Scientology, Etc.* (1982) 57 Ore.App. 203, 239 [644 P.2d

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[14] It may be noted in this connection that federal and state courts in addition to the one in *Katz* have recognized that the primary purpose of the Unification Church is religious and that its beliefs are protected under the free exercise clause of the First Amendment. As stated by one federal court, "the Unification Church, by any historical analogy, philosophical analysis, or judicial precedent . . . must be regarded as a *bona fide* religion." (*Unification Church* v. *I. N. S.* (D.D.C. 1982) 547 F.Supp. 623, 628, fn. omitted; accord, *Holy Spirit* v. *Tax Comm., supra*, 55 N.Y.2d 512, 518-519; see also, *Larson* v. *Valente* (1982) 456 U.S. 228 [72 L.Ed.2d 33, 102 S.Ct. 1673]; *Ward* v. *Connor* (4th Cir. 1981) 657 F.2d 45, cert. den. (1982) 455 U.S. 907 [71 L.Ed.2d 445, 102 S.Ct. 1253]; *Troyer* v. *Town of Babylon* (E.D.N.Y. 1980) 483 F.Supp. 1135, 1137, affd. 628 F.2d 1346, affd. 449 U.S. 988 [66 L.Ed.2d 285, 101 S.Ct. 522].)

577, 600, 40 A.L.R.4th 1017], cert. den. (1983) 459 U.S. 1206 [75 L.Ed.2d 439, 103 S.Ct. 1196] and 459 U.S. 1227 [75 L.Ed.2d 468, 103 S.Ct. 1234].)

It would be entirely possible for a trial court to accept the view of Dr. Singer and Dr. Benson that Molko and Leal did not willingly submit to the religious teachings of the Unification Church because the psychological techniques of the Church deprived them of the ability to reason critically and make independent judgments, and to conclude, accordingly, that there is a triable issue of fact in this regard; *but it would not be possible for a trial court to reach this result without questioning the authenticity and the force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden.* (*United States* v. *Ballard, supra*, 322 U.S. 78, 87 [88 L.Ed. 1148, 1154]; *Founding Church of Scientology* v. *United States* (D.C. Cir. 1969) 409 F.2d 1146, 1159 [13 A.L.R.Fed. 721], cert. den., 396 U.S. 963 [24 L.Ed.2d 427, 90 S.Ct. 434]; *Van Schaick* v. *Church of Scientology of Cal., Inc.* (D. Mass. 1982) 535 F.Supp. 1125, 1142-1145.) The idea that religious doctrine can be (or, as some would have it, invariably is) manipulatively employed to subvert reason —which, it may be noted, is an idea that has been used to condemn *all* religions as deceptively exploitive of certain universal human needs (see, e.g., Freud, The Future of an Illusion (1927))—is one we may entertain as individuals but which the First Amendment forbids us to consider as judges. Embodied in this constitutional prohibition is not simply a recognition of the value of the religious sensibility in its inevitably diverse and often conflicting forms, but as well an acknowledgement of the powerlessness of reason, and therefore the powerlessness of the law, to compass the mystery of religious faith. As Justice Douglas has stated, freedom of religious belief "embraces the right to maintain theories . . . which are rank heresy to followers of the orthodox faiths.

Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law." (*United States* v. *Ballard, supra*, 322 U.S. 78, 86-87 [88 L.Ed. 1148, 1153-1154].) Thus, from the point of view of the law, the opinions of plaintiffs' experts are neither true nor false. As the trial court observed, these opinions are simply "veiled value judgments concerning the entire outlook of the Unification Church." [15] The court's conclusions that such opinions could not be employed to create a triable issue of fact and that such a triable issue did not otherwise appear, were correct.

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[15] In this regard, the trial court pointed out that "[t]he danger of relying upon value judgments disguised as expert psychiatric opinion has been recognized in various contexts. See, e.g., *Smith* v. *Schlesinger* (D.C.Cir. 1975) 513 F.2d 462, 474-475, and authorities cited at p. 475, fn. 45; Wexler, *Forward: Mental Health Law and the Movement Toward Voluntary Treatment* (1974) 62 *Cal.L. Rev.* 671, 673; Ennis & Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom* (1974) 62 *Cal.L. Rev.* 693, 726-729. While the limitations of expert testimony as a means of evaluating an individual's state of mind more typically have been considered in upholding the fact finder's right to reject the expert's opinion, e.g., *Mills* v. *Kopf* (1963) 216 Cal.App.2d 780, 785-786, expert testimony may be excluded altogether if based on matters which may not reasonably be relied upon. Evidence Code section 801(b), and Law Revision Commission Comment thereto. See, e.g., *People* v. *Luis* (1910) 158 Cal. 185, 195; *Roscoe Moss Co.* v. *Jenkins* (1942) 55 Cal.App.2d 369; *Long* v. *Cal-Western States Life Ins. Co.* (1955) 43 Cal.2d 871; 1 Ziskin, *Coping with Psychiatric and Psychological Testimony* vii (3d ed. 1981). It has also been suggested that opinions in this area are not sufficiently beyond common experience to warrant expert testimony. Evidence Code section 801(a). See Morse, [*Crazy Behavior, Morals and Science: An Analysis of Mental Health Law* (1978)] 51 So.Cal.L. Rev. [527] at pp. 558-560."

We do not, of course, mean to suggest that because it is a bona fide religious organization the conduct of the Unification Church is, as are its beliefs, entirely immune from government restriction. As emphasized by the United States Supreme Court in *Cantwell* v. *Connecticut* (1940) 310 U.S. 296 [84 L.Ed. 1213, 60 S.Ct. 900, 128 A.L.R. 1352], and reiterated in *Katz*, "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without a doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." (*Cantwell* v. *Connecticut*, *supra*, 310 U.S. at pp. 306-307 [84 L.Ed. at p. 1219], fn. omitted; *Katz* v. *Superior Court*, *supra*, 73 Cal.App.3d 952, 987, fn. 13, and cases there cited.)

The beguiling and very intensive recruiting methods of the Unification Church, which appear primarily directed at those young people who are most emotionally impressionable and vulnerable, seem objectionable to us, as doubtless they do to most disinterested observers. Nonetheless, there is no evidence, and indeed it is not even claimed, that plaintiffs were induced to join and remain with the Church through the use or the threat of force or through other unlawful conduct or that plaintiffs were physically harmed during the recruitment process. Thus, we are not presented with such a substantial threat to public safety, peace or order that the state, through the judicial process, may intervene and impose liability

based upon mental health experts' opinions of the methods employed by members of a valid religious organization to impress their ideas upon mentally competent adults. (Compare *Meroni* v. *Holy Spirit Ass'n for Unification* (1984) 125 Misc.2d 1061 [480 N.Y.S.2d 706] [claim for emotional distress where it was alleged that Church members knew recruit was already emotionally disturbed could survive motion to dismiss].) If liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been "brainwashed" by the religious organization, and courts would become entangled in determining which former adherents acted out of true faith and which were subject to "mind control." This is a result clearly at odds with the First Amendment. "'[T]he judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the conditions of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals." (*Watson* v. *Jones* (1872) 80 U.S. (13 Wall.) 679, 731 [20 L.Ed. 666, 677]; see also *Serbian Orthodox Diocese* v. *Milivojevich* (1976) 426 U.S. 696, 713 [49 L.Ed.2d 151, 165, 96 S.Ct. 2372]; *Kedroff* v. *St. Nicholas Cathedral* (1952) 344 U.S. 94 [97 L.Ed. 120, 73 S.Ct. 143].)[16]

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[16] Since we have determined that plaintiffs did not rely upon the initial failures to disclose the Church's affiliation in joining and remaining with the Church, and that the proferred evidence of "mind control" in the circumstances of this case cannot constitutionally be used to negate the evidence that plaintiffs acted voluntarily in so joining and remaining after having knowledge of the identity of the Church, we need not consider the Church's argument that the failure to disclose the identity or affiliation of their organization in recruiting new members can *never*, consistent with the First Amendment, constitute actionable misrepresentations.

B. *Intentional Infliction of Emotional Distress*

Molko and Leal contend that defendants' fraudulent representations and use of mind control techniques caused them severe emotional distress. In support of these contentions they rely primarily upon the declarations of Dr. Singer and Dr. Benson. For reasons just described, which we need not reiterate, these opinions cannot constitutionally be employed to impose liability upon the Church.

Additionally, Molko and Leal contend that they suffered emotional distress through threats of harm. In her answers to interrogatories Leal described as follows the threats of harm she experienced: "death, illness, pain and suffering, disease of all possible sorts were believed to befall anyone who left the movement and including family, regardless of their love of God in a Christian manner." Molko similarly described the threats of harm he experienced: "constant expression of how important it was not to leave the church because it was spiritually devastating, in that, people became ill, they experienced difficulty in dealing with people and/or their jobs. That people had died after leaving the church with a clear indication that there was a positive correlation between leaving the church and either becoming ill or dying in a rather peculiar way."

The elements of a prima facie case of intentional infliction of emotional distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress. (*Newby* v. *Alto Riviera Apartments* (1976) 60 Cal.App.3d 288 [131 Cal.Rptr. 547]; Rest.2d Torts, § 46.) "The conduct must be outrageous, i.e., beyond all bounds of decency; ordinary rude or insulting behavior is not enough to justify an award of damages." (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 234, p. 2515.)

The trial court held that "[w]hatever value judgments one may place upon the Church's methods, Defendants' conduct was not extreme and outrageous in the sense required to support such a cause of action under California law. See, e.g., *Cortez* v. *Macias* (1980) 110 Cal.App.3d 640, 651-653; *Fuentes* v. *Perez* (1977) 66 Cal.App.3d 163; *Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 497-499."

We find nothing in the record that compels us to disagree with this conclusion. As the evidence indicates and as the trial court found, plaintiffs joined the Unification Church and remained members out of the desire to satisfy certain personal needs each was then experiencing. There is no competent evidence either plaintiff was compelled to join the Church or prevented from leaving. To the contrary, plaintiffs were at all times free to maintain contact with non-members, as they did, and to end their involvement with the Church and repudiate its teachings, as eventually they also did. The technique used to recruit and indoctrinate plaintiffs, which are not materially different from those employed by other organizations (see, e.g., *Christofferson* v. *Church of Scientology, Etc., supra*, 57 Ore.App. 203, 211-227; 644 P.2d 577, 584-591), are neither so indecent nor so beyond the limits of social toleration that they provide the necessary element of outrageous conduct. (*Ibid.*)

Additionally, the threats of which plaintiffs complain are those of divine retribution. Such threats, certainly not unique to the Unification Church, are protected by the First Amendment and cannot form the basis for a claim of intentional infliction of emotional distress.[17]

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[17] In response to plaintiffs' suggestion that they were also prevented from leaving the Church by their fear of disappointing other Church members, the trial court correctly observed that threats of social ostracism are not impermissible and, indeed, are also constitutionally protected. (*NAACP* v. *Claiborne Hardware Co.* (1982) 458 U.S. 886 [73 L.Ed.2d 1215, 102 S.Ct. 3409].)

(See *Fowler* v. *Rhode Island* (1953) 345 U.S. 67, 70 [97 L.Ed. 828, 831, 73 S.Ct. 526] [court cannot regulate or control sermons]; see also *Van Schaick* v. *Church of Scientology of Cal., Inc., supra,* 535 F.Supp. 1125, 1139 [exhortations to sever family and marital ties and depend solely on church for emotional support will not support claim for infliction of emotional distress—"They are similar to the demands for single-minded loyalty and purpose that have characterized numerous religious . . . movements over the ages."].) If threats of this sort were actionable, litigation against religious entities by former believers would be unconstrained and rampant. Such a result, however, is precluded by the First Amendment.

C. *False Imprisonment*

Molko alleges he was falsely imprisoned by defendants at Camp K near Healdsburg, the farm in Booneville and various locations in San Francisco. Leal alleges she was falsely imprisoned at Camp K; the farm in Booneville; Boulder, Colorado; Los Angeles; and various locations in San Francisco. Both allege that such false imprisonment had been accomplished by threats of harm to them and their families, deprivation of sleep and psychological manipulation.

False imprisonment is defined as "the unlawful violation of the personal liberty of another." (Pen. Code, § 236; see *Parrott* v. *Bank of America* (1950) 97 Cal. App.2d 14, 22 [217 P.2d 89, 35 A.L.R.2d 263] [definition of crime and tort the same]. "The tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." (*City of Newport Beach* v. *Sasse* (1970) 9 Cal.App.3d 803, 810 [88 Cal.Rptr. 476] [citations omitted].) The confinement must be effected either by force or fear of force on the part of the victim. In the absence of force, the victim must feel "compelled to obey because he fears harm or injury,"

and his apprehension must not be unreasonable under the circumstances. (*People* v. *Martinez* (1984) 150 Cal.App. 3d 579, 599-600 [198 Cal.Rptr. 565].)

The trial court found that "neither Plaintiff was falsely imprisoned as conventionally understood," noting that both had acknowledged they were never physically seized or restrained physically. In fact, during the period of his alleged imprisonment, Molko commuted to a bar review course. Both plaintiffs acknowledge they were not physically restrained, but contend they were imprisoned by fraud and deceit and prevented from leaving because of the use of mind control techniques by defendants.

Plaintiffs rely upon *Parnell* v. *Superior Court* (1981) 119 Cal.App.3d 392 [173 Cal.Rptr. 906] for the proposition that consent of the victim is not a defense where the consent is induced by coercion or deception. On this basis they argue that their consent to remain on various premises owned or maintained by the Church is no defense to their claim because such consent was deceptively induced by mental coercion.

In *Parnell* the defendant was charged with the kidnapping and false imprisonment, lasting eight years, of a seven-year-old boy. This court held there both that there was sufficient circumstantial evidence that the detention was effected by threat of force and that consent of the victim is no defense where the consent is induced by coercion or deception. (*Parnell* v. *Superior Court*, *supra*, 119 Cal.App.3d 392, 409.) Putting aside the facts that *Parnell* involved a child of tender years and that the imposition of criminal liability sustained in that case did not threaten the exercise of First Amendment rights, our decision there did not eliminate force or threat of force as an element of false imprisonment. Thus if there is no confinement by force or threat of force, the issue of consent does not even arise.

Here, the only evidence of force or threats of force which plaintiffs seek to rely upon are the "mind control" testimony of Dr. Singer and Dr. Benson and threats of divine retribution. As we have explained, such evidence may not in the circumstances of this case be used to create a triable issue of fact. Consequently, the award of summary judgment on this cause of action, as on the causes of action for fraud and deceit and intentional infliction of emotional distress, was proper.

D. *Molko's Claim for Restitution*

Molko bases his claim for restitution of the $6,000 which he contributed to the Church upon his allegations of being fraudulently induced to join the Church and of domination and control by defendants by use of threats, deprivation of sleep, excessively long hours of work and other activities, and psychological manipulation.

The trial court reviewed Molko's deposition testimony regarding the circumstances of his making the contribution: "I was told that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church." He had been fasting in Booneville before making the gift, but only for "a day or two." He was asked to travel to San Francisco, which he did by himself; then "Got to San Francisco and was presented with the fact—oh, we are desperately in need of money. Tax time is coming up. Can you help us? The Heavenly Father is asking you to help us."

One of the Church members in whom Molko had the greatest confidence told him she "thought I should do what I thought was best" and "was pretty much leaving it up to me."

While Molko contributed $6,000 to the Church, he was told that the Church would, as it did, pay for his tuition

for the bar review course. His explanation for giving and then receiving back a portion of the money was: 'That you gave God money and then God used your money rather than you using your money, and it worked better that way. In other words you gave your money to God and then God can distribute your money. And that way, the spiritual world can work for you." He also testified that at the time of making the gift he accepted that proposition.

Molko further testified that although he had some misgivings after agreeing to transfer the money, he did not ask to have it returned because: "I really believed that there was [*sic*] evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had suposedly given to God." Molko revealed that he had other funds (amounting to "several thousand" dollars) which were available to him while he was a member of the Church, the existence of which he did not disclose to defendants. Referring to these funds, he stated: "I drew the line . . . . They [the funds] were quite under my control, but they stayed where they were." The trial court correctly determined that no triable issue of fact had been raised as to the question of undue influence.

Molko's own uncontroverted description of the circumstances under which he made the gift demonstrates that he did so out of a then held religious belief. The only evidence he has attempted to rely upon in support of a contrary view are misrepresentations made to him which he claims fraudulently induced him to join the Church and the "mind control" evidence of the two experts. As set forth earlier, the trial court justifiably determined that there was no reliance upon fraudulent misrepresentations and ruled correctly that, in the circumstances of this case, the testimony of Dr. Singer and

Dr. Benson may not constitutionally be used to create a triable issue of fact.

A former member of a religious organization who, like Molko, made a gift on the basis of religious beliefs he no longer holds cannot challenge the validity of the gift without challenging the validity of his former beliefs. Inquiry into the reasonableness of the beliefs which prompted him to make the contribution is, however, foreclosed by constitutional guarantees of freedom of religion. (*Estate of Supple* (1966) 247 Cal.App.2d 410, 414-415 [55 Cal.Rptr. 542], cert. den. (1967) 389 U.S. 820 [19 L.Ed.2d 70, 88 S.Ct. 37] [court cannot examine the validity or reasonableness of religious beliefs of testator], citing *United States* v. *Ballard*, *supra*, 322 U.S. 78 and *People* v. *Woody* (1964) 61 Cal.2d 716, 726 [40 Cal. Rptr. 69, 394 P.2d 813].)

"Once it is conceded that [F]irst [A]mendment values are unacceptably compromised when civil courts undertake to settle religious issues, it becomes clear that allowing a legal determination about property or some other secular matter to turn on a court's answer to a religious question represents a path fraught with peril: the path is one along which unsatisfied former believers could drag the civil courts into the theological thicket by the simple expedient of suing for a refund of their prior donations to a religious organization. . . . [¶] The existence of dissidents is a pervasive fact of religious life; their role within religious organizations can be the healthy one of spurring continuing introspection and reexamination of doctrine. But it is not hard to imagine what would occur if each potential dissenter were told: contributing to a religious organization—your own or indeed that of a group you reject—will give you a judicial platform from which to air your religious differences with others and potentially win a favorable verdict; all you need do in order to overcome the normal bar to civil adjudication of ecclesiastical matters is sue for a re-

fund! [¶] Not only would such an invitation declare open season on churches and their followers; it could at the same time make at least some religious groups resist the very attempt to solicit donations, while inducing others—those too desperate for resources to refrain from financial appeals—to rigidify their doctrines and freeze or at least conceal their own evolution for fear that doctrinal change, ordinarily immune from censorship, could trigger refund-seeking litigation. It is in part for reasons such as these that the [F]irst [A]mendment has been construed to mean that religious questions remain non-justiciable even when they do not reach civil courts independently but instead form preliminary or ancillary issues in an otherwise justiciable dispute." (Tribe, *American Constitutional Law* (1978) pp. 874-876.) To permit Molko's claim to go to trial on the evidence he has presented would have numerous adverse consequences for religion which the First Amendment was designed to avoid.

For the foregoing reasons, we conclude that the court below properly awarded summary judgment to the Unification Church on all plaintiffs' causes of action.[18]

III. The Appeals of the Unification Church From Judgments of Dismissal on Its Cross-complaint

A. *The Proceedings Below*

The Church's cross-complaint alleged a cause of action for indemnity against cross-defendant Neil Maxwell and alleged separate causes of action under 42 United States Code section 1985(3) and Civil Code sections 51.7 and 52 against all three of the cross-defendants involved in

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[18] Due to the conclusions we have reached here, we do not consider the Church's additional contentions, set forth in footnotes to its brief, that Molko's claims for intentional infliction of emotional distress and false imprisonment are barred by the statute of limitations.

these appeals, Maxwell, Joseph Alexander, Sr. and David Molko.[19]

Maxwell demurred to the indemnity cause of action on the basis that it failed to state a cause of action. All three cross-defendants demurred to the federal and state civil rights causes of action on the ground that the Church lacked standing to sue. Maxwell and Alexander additionally demurred to these two causes of action on the basis that they were barred by the statute of limitations.[20]

The trial court sustained the demurrers "on all grounds stated" without leave to amend. Thereafter the Church filed a motion for reconsideration, urging that any defects in the first amended cross-complaint could be cured by further amendment and requesting leave to file a proposed second amended cross-complaint, a copy of which was attached to its motion. The trial court denied the motion for reconsideration and judgments of dismissal were subsequently entered.

A general demurrer admits the truth of all material factual allegations in the complaint or, as here, cross-complaint; the question of the plaintiff's ability to prove the allegations, or the possible difficulty in making such proof, does not concern the reviewing court; and the plaintiff need only plead facts showing that he may be entitled to some relief. (*Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [86 Cal.Rptr. 88, 468 P.2d 216], citations omitted.) A demurrer should not be sustained if the pleading, liberally construed, states a cause of action on any theory. (5 Witkin, Cal. Procedure (3d

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[19] Various claims were asserted against other cross-defendants who are not parties to these appeals.

[20] Alexander also demurred to the federal and state civil rights causes of action on the ground that they were uncertain. He has not urged this argument on appeal in support of the judgment below and we do not consider it.

ed. 1985) Pleading, § 942, p. 377.) The general rule is that it is an abuse of discretion to sustain a demurrer without leave to amend unless the complaint shows that it is incapable of amendment. (*Berkeley Police Assn.* v. *City of Berkeley* (1977) 76 Cal.App.3d 931, 942 [143 Cal.Rptr. 255].) We review the sustaining of the demurrers in this action under these established principles; except that we do not review the sustaining of the demurrer with respect to the indemnity cause of action, which has been rendered moot by our earlier holding that the granting of summary judgment to the Unification Church was proper.

B. *Standing of the Church to Assert Claims Under 42 U.S.C. Section 1985(3)*

The Church alleged that, as a result of their class-based animus toward the Church and its members, the cross-defendants had conspired to deprive the Church and its members of the equal protection of the laws and of "equal privileges and immunities under the laws." [21] The

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[21] 42 United States Code section 1985(3) provides: "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

allegations against Maxwell, Alexander and Molko were essentially the same, with the exception of the identity of their co-conspirators and the Church members who were allegedly kidnapped in furtherance of the conspiracy.[22] It was alleged that the cross-defendants' purpose was, inter alia, to prevent members of the Church from freely exercising their religious beliefs through interstate travel. The cross-complaint alleged that an injunction was required to prevent cross-defendants from continuing their efforts to kidnap and "deprogram" members of the Church. It also sought compensatory and punitive damages. The Church has abandoned the contention urged in the court below that it may assert a claim for violation of its own right and that of its members to free exercise of religion under 42 United States Code section 1985(3), but still contends it has representational standing to assert a violation of its members' constitutionally guaranteed right to travel.[23]

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[22] It was alleged that Maxwell participated in a conspiracy to kidnap David Molko. Alexander and Molko were alleged to have participated in a conspiracy to kidnap a Church member named Brenna Steinberg.

[23] In *Carpenters v. Scott* (1983) 463 U.S. 825, 830 [77 L.Ed.2d 1049, 1055, 103 S.Ct. 3352], the Supreme Court held that an alleged conspiracy to infringe First Amendment rights is not a violation of section 1985(3) unless it is proved that the state is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the state. The Court recognized, however, that, in accordance with its earlier decision in *Griffin* v. *Breckenridge* (1971) 403 U.S. 88 [29 L.Ed.2d 338, 91 S.Ct. 1790], section 1985(3) reaches purely private conspiracies aimed at depriving persons of the right to travel guaranteed by the federal Constitution. (*Carpenters* v. *Scott, supra,* 463 U.S., at pp. 832-833 [77 L.Ed.2d at pp. 1056-1057].) The Court also declined to pass on whether section 1985(3) reaches conspiracies other than those motivated by racial bias. (*Id.,* at p. 835 [77 L.Ed.2d at p. 1058].) The Fourth Circuit, however, noting that "the lower federal courts have, almost without exception, extended the coverage of the statute [section 1985(3)] to religious groups [citations]," has expressly held that a conspiracy against the Unification Church motivated by re-

Cross-defendants initially respond that the Church cannot have representational standing under section 1985(3) because only a "person" can sue under that statute. This argument is simply erroneous. The right of an organization to sue under the statute has repeatedly been recognized. (See, e.g., *N.A.A.C.P.* v. *Detroit Police Officers Ass'n., Etc.* (E.D.Mich. 1981) 525 F.Supp. 1215, 1218; *Vietnamese, Etc.* v. *Knights of K. K. K.* (S.D.Tex. 1981) 518 F.Supp. 993, 1000; see also *Chico Fem. Women's Hlth. Cr.* v. *Butte Glenn Med. S.* (E.D.Cal. 1983) 557 F.Supp. 1190, 1194, fn. 6.)

Cross-defendants next claim that the Church fails to meet the standing requirements for an association set forth by the Supreme Court in *Hunt* v. *Washington Apple Advertising Comm'n.* (1977) 432 U.S. 333, 343 [53 L.Ed.2d 383, 394, 97 S.Ct. 2434]: "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."[24] (See also *Warth* v. *Seldin* (1975) 422 U.S. 490, 511 [45 L.Ed.2d 343, 361, 364, 95 S.Ct. 2197].) In our view, the Church has met this standard.

Unquestionably, Church members would have standing to sue for the alleged violation of 42 United States Code section 1985(3) in their own right. Further, the Church's

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ligious discrimination falls within the ambit of section 1985(3). (*Ward* v. *Connor, supra*, 657 F.2d 45, 48; see generally Annot., Civil Liability for "Deprogramming" Member of Religious Sect (1982) 11 A.L.R.4th 228.)

[24] Since we determine that the Church has met this standard, we need not address the Church's contention that a more lenient state law standard (see *Stocks* v. *City of Irvine* (1981) 114 Cal.App.3d 520, 531-533 [170 Cal.Rptr. 724]) governs the issue of standing in this case.

interest in protecting its members' rights to freely travel in the exercise of their religious activities is germane to the Church's purpose as alleged in the cross-complaint: "The primary purpose of the church is the worship of God and engaging in related religious activities. The members of the Church constitute a recognizable group of persons who are bound together by an intellectual and spiritual nexus. Through their association, members of the Church seek to disseminate and enhance their religious beliefs through the free exchange of ideas, through interstate travel and through peaceful assembly." Thus the first two requirements of *Hunt* are met.

As to the third requirement, it does appear that the request for damages in the first amended cross-complaint would require the participation of individual members of the Church.[25] (See *Warth* v. *Seldin*, *supra*, 422 U.S. 490, 515-516 [45 L.Ed.2d 343, 364-365]; *R.I. Chapter, Assoc. Gen. Contractors* v. *Kreps* (D.R.I. 1978) 450 F.Supp. 338, 346, fn.3.) The Church, however, sought leave to file a second amended cross-complaint in which damage claims were deleted and injunctive relief only was sought.[26] As this amendment would have eliminated the need for participation of individual members in the action, the trial court abused its discretion in denying leave to file the proposed second amended cross-complaint.[27]

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[25] We deem frivolous Maxwell and Alexander's contention that individualized participation is required because they would defend on the ground that members of the Church are "brainwashed" and do not act of their own free will. If such a defense were available to them, they would develop it through discovery regardless whether individual members were parties to the action.

[26] In junctive relief is available under 42 United States Code section 1985. (*Action* v. *Gannon* (8th Cir. 1971) 450 F.2d 1227, 1237-1238; *Mizell* v. *North Broward Hospital District* (5th Cir. 1970) 427 F.2d 468, 473.)

[27] We also deem frivolous Maxwell and Alexander's suggestion that the Church may not be accorded representational standing be-

C. *Standing of the Church to Assert Claims Under Civil Code Sections 51.7 and 52*

As to the state civil rights claims, the only arguments cross-defendants advance in addition to the standing argument just discussed are that only a "person" can sue under the pertinent statutes, and that the requirement of Code of Civil Procedure section 367 that an action be prosecuted in the name of the real party in interest precludes the Church from bringing suit on behalf of its members. These arguments are without merit.

Civil Code section 14 expressly provides that the word "person" as used in that code "includes a corporation as well as a natural person." [28] Civil Code sections 51.7 and 52, by their language, protect the rights of "persons." Thus a corporation can maintain a cause of action under those sections.

Additionally, Code of Civil Procedure section 367 has never been held to bar an association or organization from bringing suit on behalf of its members. If cross-defendants' argument were correct, such a suit could never be maintained under California law. Such suits, however, are clearly permissible and cross-defendants' contention erroneous. (See *Gay Law Students Assn.* v. *Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 465, fn. 3 [156 Cal.Rptr. 14, 595 P.2d 592]; *County of Alameda* v. *Carleson* (1971) 5 Cal.3d 730, 737, fn. 6 [97 Cal.Rptr. 385, 488 P.2d 953], appeal dismissed (1972) 406 U.S.

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cause its advocacy of its members' interests is not sincere or "bona fide." Certainly nothing in the cross-complaint or in the evidence before the trial court indicates that this is so, and this factual contention has no place in an argument supporting the sustaining of a demurrer.

[28] The Church alleged in its cross-complaint that it is a California nonprofit corporation. (See also, fn. 2, *ante*.)

913 [32 L.Ed.2d 112, 92 S.Ct. 1762]; *Residents of Beverly Glen, Inc.* v. *City of Los Angeles* (1973) 34 Cal. App.3d 117, 121-123 [109 Cal.Rptr. 724].)

D. *The Statute of Limitations*

Maxwell and Alexander maintain that the Church's claims under the federal and state civil rights statutes are barred by the statute of limitations because they are subject to the one-year limitation period of Code of Civil Procedure section 340, subdivision (2) (personal injury and various other torts), rather than the three-year limitation period of section 338, subdivision 1 (action on a liability created by statute). We need not reach this issue for, as we have noted, the Church has abandoned any claims for money damages under the civil rights statutes. It seeks to file a second amended cross-complaint seeking injunctive relief only as to what it alleges to be an ongoing conspiracy among the cross-defendants. If a conspiracy is actually proved to be continuing, the action is obviously timely. If no continuing conspiracy is proven, injunctive relief will, of course, be denied.

IV. Conclusion

As we have determined that summary judgment was properly granted to the Unification Church, the judgment entered in its favor on the complaint is affirmed. The Church's cause of action for indemnity against Maxwell (the fourth cause of action of the cross-complaint) is thereby rendered moot.

We have also concluded that the court below abused its discretion in sustaining without leave to amend the demurrers to the Church's causes of action against Maxwell, Alexander and Molko under 42 United States Code section 1985(3) and Civil Code sections 51.7 and 52 (the fifth, sixth, seventh and eighth causes of action of the

cross-complaint). The judgments of dismissal entered on those causes of action are therefore reversed. The court is directed to vacate its orders sustaining without leave to amend the demurrers of Maxwell, Alexander and Molko to the cross-complaint and to grant leave to the Church to file its proposed second amended cross-complaint.

Rouse, J., and Smith, J., concurred.

APPENDIX C

CALIFORNIA SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT NUMBER THREE

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

And Related Cross-Actions.

ORDER GRANTING SUMMARY JUDGMENT

This action has been brought by two young adults, Tracy Leal and David Molko, who for periods of four and one-half and six months respectively were associated with the Unification Church,[1] but who have since left the Church and now claim that their faith was induced by improper conduct on the part of the Church and its recruiters. Plaintiffs allege that the recruiters initially misrepresented and concealed their affiliation with the Unification Church, and that Defendants then achieved such control over them by systematic manipulation of

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[1] The two Defendants who have appeared in the action are the Holy Spirit Association for the Unification of World Christianity and New Education Development Systems, Inc., both herein collectively referred to as the "Unification Church."

social influences that Plaintiffs were incapable of leaving when they discovered the group's true identity. Defendants' conduct is alleged, among other things, to have constituted a false imprisonment and a fraud, and to have intentionally inflicted emotional distress, for which Plaintiffs seek recovery of substantial compensatory and punitive damages. Plaintiff Molko also seeks the return of a $6,000.00 contribution he made allegedly while under the control of the Church.

The Defendants have moved for Summary Judgment or for more limited summary adjudications in their favor, prompting Plaintiffs to acknowledge that they are not entitled to recover under theories of violation of Civil Rights (First and Seventh Causes of Action) and Unfair Business Practices (Fifth and Tenth Causes of Action). Hence, there remains for consideration Defendants' Motion as it relates to the Causes for Action for False Imprisonment (Second and Eighth), Intentional Infliction of Emotional Distress (Fourth and Ninth); Fraud and Deceit (Sixth and Eleventh); and Restitution of Gift and Accounting (Third).

FACTS

In her Declaration in Opposition to Motion for Summary Judgment, Plaintiff Tracy Leal summarizes her four and one-half month encounter with the Church (at a time when she was 19 years of age and a college student) as follows. On June 7, 1979, she was first approached in a San Francisco bus station by a young woman who introduced her to another young man. The two indicated they lived with a group in San Francisco called Creative Community Project. Ms. Leal asked, "Is this some religious thing?" The young man responded that they all came from different religious backgrounds. Plaintiff agreed to attend dinner at their house on Bush Street, but was not allowed to speak with any of the other guests present. Ms. Leal then agreed to visit the

group's farm in Booneville. She was not prevented from leaving the farm, although transportation back to San Francisco was somewhat limited. While at the farm, Ms. Leal was kept busy with lectures, exercises, and group discussions. She had little sleep, was always accompanied by group members, and was not allowed to speak with other guests. After several days at Booneville, she was taken to Camp K, which was located in a fairly remote area of Northern California. Although Camp K had a locked gate, it was possible to leave by crossing a stream. On the second day at Booneville, in response to Plaintiff's question, a leader denied that the group was the "Moonies." Later, at Camp K, there was a similar denial, but on the same evening Ms. Leal was told that Reverend Moon's teachings were among those studied. After several weeks, she was told that Moon was their spiritual leader and that the organization was the Unification Church; by that time, she alleges, she had lost her ability to make resolute determinations. Ms. Leal became a "Moonie" and participated in the activities of the Unification Church, she now says, because she had lost her ability to freely choose whether or not to stay with the group.

Several months later, on October 20, 1979, Ms. Leal was removed forcibly from the streets of Los Angeles by persons hired by her parents and subjected to "deprogramming"; this action was filed on her behalf on July 25, 1980.

In his Declaration in Opposition to Motion for Summary Judgment, Plaintiff David Molko summarizes his experiences with the Unification Church as follows. On January 21, 1979, (when he was 27 years of age and had recently taken and passed the examination for admission to the Pennsylvania Bar), he was first approached by two young men who indicated they were involved in a group with environmental concerns called Creative Community Project. They denied they were af-

filiated with any religious group. Mr. Molko agreed to attend dinner at their house on Bush Street, but was not allowed to speak with any of the other guests present. After watching a slide show, he agreed to visit the group's farm near Booneville. Plaintiff was told not to speak with other guests and was always accompanied by members of the group. He was kept busy and given little time to sleep. Several times he considered returning to San Francisco, but each time he was persuaded by group members not to do so. After several days at Booneville, Mr. Molko went to Camp K, where approximately one week later he began to realize the group was affiliated with the Unification Church and Reverend Moon. By the time he learned the true nature of the group, he says he had already committed himself to staying with them. Mr. Molko now states that his spirit of free will had been broken by absence of contact with the outside world, the rigid indoctrination program, and his inability to make any decision on his own. Although he acknowledges that he physically could have left, and that he was aware that other guests did leave, Mr. Molko states that he did not leave because he did not want to let down all the other members of the group.

On July 26, 1979, as he was leaving the final session of the examination for admission to the California State Bar, in San Francisco, he was seized and prevented from returning to Camp K. After he had been subjected to "deprogramming," this action was also filed on his behalf.

Both Plaintiffs elaborated on their experiences in their responses to discovery requests. Thus, in her Answers to Defendants' Interrogatories (Set One), Tracy Leal states that she met David Molko on her first day with the group, soon after she had been approached at the bus station. "It was a gorgeous, sunny day. We had lunch around a table with David Molko at the table. He was a resident attorney. David knew one of my girlfriends

from junior high and high school. He was enthusiastic." (14:1-4.) After dinner that first night, Ms. Leal was asked to sign "a little hold-harmless sheet" and pay $20 in order to go to Booneville. This she did. (14:13-17.) Once she had joined the group, "departing was prevented as a result of large doses of attention and listening and care such as that between highly expressive, loving friends or family." (7:5-7.) Three weeks after she was first approached, she was told about the Church and asked to stay. "I said yes." (10:20-27.) "I was surrounded by people working harder than I had ever seen anyone do before—without complaint. I was trying to prove myself worthy of . . . special attention." (9:28-10:3.) After about three weeks "I sized up Booneville to be a place where new recruits were essentially indoctrinated in order to make them Unification Church members, but by this time I felt the means justified the ends." (15:11-15.)

At her deposition, Ms. Leal described her reasons for agreeing to go to Booneville. "I had been in San Diego, like I said, a big city and cold and impersonal . . . and I have a great love of the country. The stuff sounded interesting; sounded vague, but interesting. It wouldn't hurt to learn about this, about how a community gets together to actually accomplish something. That sounded worth knowing . . . ." (Vol. I, 47:18-27.) On the second day at Booneville, she approached a lecturer and asked, "Are you the Moonies?" The reply was "No, but we are a form of Christian group, but we don't really want to drive anyone away. So we are trying not to scare people away who might not be Christians. So we are just keeping quiet about it for awhile." This acknowledgement that the members were not being fully candid about their affiliation did not bother her. (Vol. I, 63:13-26.) Plaintiff testified that she was awakened early in the mornings by group members who came in singing. When asked what happened to those who refused to get up early, she re-

sponded, "They would either leave of their own volition, or be encouraged to leave." (Vol. I, 86:13-16.) Ms. Leal was quite happy when she first joined the group. "If I were to describe it, it would be the joy of childhood, to relinquish responsibility." (Vol. II, 56:5-12.) She testified that she believes most of the group were sincere in their commitment. "They probably had their doubts, too, and dealt with it by acting all the more fervently in favor." (Vol. III, 88:2-11.) While she was at Camp K, Ms. Leal wrote to her parents. They also came with her brother to see her at the Bush Street house, and she spent 15-20 minutes alone talking with each of them. They insisted that she leave with them but she refused, fearing they intended to abduct or "deprogram" her (Vol. III, 66:6-67:10; 68:9-12; 70:3-17; 89:9-11; 90:12-91:13.) Plaintiff testified that she deliberately induced her own suffering (hard work and long hours, cold showers, little food, banging her head on the floor) "so as to hasten my self-improvement and growth towards God by paying indemnity." (Vol. III, 169:22-170:18; 172:4-7.)

At his deposition, Mr. Molko testified that he had seen no evidence of anyone at Booneville being restrained against their will. (Vol. I, 135:28-136:15.) He knew a bus left camp daily for San Francisco, but he decided not to leave. (Vol. I, 144:22-145:16; 238:13-239:4.) After the first few days with the group, he decided that staying was more important than leaving to keep an appointment he had made earlier. (Vol. I, 169:1-10.) After ten days or so, he knew the group was associated with Moon. He says that he reacted differently to the information than he would have had it been provided at the beginning—he was more favorably disposed having had the chance to get to know the people first. (Vol. II, 18.) Mr. Molko had regular and frequent access to friends and family by telephone, and was visited by his family. (Vol. I, 171:22-173:8; Vol. II, 33:2-34:9; Vol. I, 36:9-25.) When Mr. Molko's parents visited him at Camp K, they tried

unsuccessfully to persuade him to leave. (Vol. III, 160:2-161:17.) He remained with the group because he was interested in the opportunity to have one-on-one personal relationships with other members of the Church, many of whom he respected and admired. (Vol. I, 176:28-178:15.) He believes all those in whom he had the greatest confidence were sincere and believed what they were doing was in his own best interest. (Vol. I, 180:24-181:28.) At the urging of a Church leader, and at Church expense, Mr. Molko completed a Bar review course at Hastings Law School in San Francisco while he was living at Camp K, and he then took the Bar examination. (Vol. II, 65:12-18.)

In resisting Defendants' Motion for Summary Judgment, Plaintiffs rely heavily upon the declarations of two experts, Margaret Singer and Samuel Benson. Because the declarations submitted initially in opposition to the Motion plainly contained no competent evidence concerning the state of mind of Ms. Leal or Mr. Molko, Plaintiffs were given the opportunity to file supp'emental declarations from these experts, which they did. Plaintiffs thus have had full opportunity to offer the evidence which they believe creates triable issues of fact with respect to their claims.

Dr. Singer, a clinical psychologist who claims to have interviewed 260 persons who either were or had been connected with the Unification Church, states she has found a striking resemblance between the methods of recruitment and control used by "the cults" and those used on some of the prisoners of war returned from Korea she had interviewed. (3:4-6.) She further states that Unification Church recruiters engage in systematic manipulation of the social influences surrounding the potential recruit to the extent that he loses the capacity to exercise his own free will and judgment. (3:9-12.) Dr. Singer then states that she examined both Plaintiffs and

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found that their ability to judge for themselves was greatly diminished by the methods employed, and that Plaintiffs were incapable of responding to the information that they had been deceptively recruited by Moonies, with whom they would not otherwise have freely associated. (3:23-28.) Dr. Singer states she found that as a result of the systematic manipulation of social influences performed by the Unification Church recruiters, both Plaintiffs were deprived of the judgment capacity to disassociate themselves from the Church and its members. (4:8-12.) Dr. Singer does not specify what information gleaned from her examination of the Plaintiffs led her to reach these conclusions.

Plaintiffs' second expert, Dr. Samuel Benson, is a psychiatrist who claims to have treated "a significant number" of patients suffering from psychological disorders secondary to their connection with various "cults" such as the Unification Church. (1:20-23.) Dr. Benson states he has found the recruitment and indoctrination methods employed by the Unification Church—which he too describes without elaboration as the systematic manipulation of social influences—frequently result in the recruit being persuasively coerced into activities in which he would not engage in the free exercise of his own will and intellect. (1:24-2:5.) Dr. Benson states that he, too, has examined both Plaintiffs and found they were so coerced by the systematic manipulation employed as to be rendered under the influence of those who were recruiting their membership and controlling their actions. (2:18-23.) Dr. Benson then concludes that both Plaintiffs were rendered incapable of exercising their own will and judgment by the time they learned their recruiters were acting for the Unification Church. (2:23-26.) Dr. Benson also does not indicate what, if any, specific information obtained from examination of the Plaintiffs supports his conclusions.

FALSE IMPRISONMENT

Plaintiffs' Second and Eighth Causes of Action allege claims for False Imprisonment. Both Plaintiffs allege the Defendants seized them and against their will and without their consent induced them to join the Church and held them without their consent at various locations by the use of threats of harm to them and to their families, deprivation of sleep, and psychological manipulation.

False imprisonment is defined as "the unlawful violation of the personal liberty of another." Penal Code section 236. The tort requires direct restraint of the person for some appreciable length of time compelling him to stay or go somewhere against his will, although the restraint can be by apprehension of force resulting from words, gestures, or acts. *Baines v. Brady* (1953), 122 Cal.App.2d Supp. 957; 4 Witkin, *Summary of California Law*, 2498 (8th Ed. 1974).

From the uncontroverted facts in this record, it is clear that neither Plaintiff was falsely imprisoned as conventionally understood. Contrary to the apparent meaning of the allegations of their Complaint, both Plaintiffs have acknowledged that they were never physically seized or restrained by the Defendants. At no time were they held by force of any kind; nor were their family members or others prevented from gaining access to them. To the contrary, both Plaintiffs acknowledge that they could have left at any time as they observed others doing, had they desired to do so, and that they spoke with their parents and rejected their pleas to depart. Indeed, during the period of his alleged "imprisonment," Mr. Molko commuted back and forth to San Francisco to prepare for and then to take the examination for admission to the California State Bar.

Similarly, Plaintiffs have acknowledged that Defendants made no threats of force or of other unlawful con-

duct. Plaintiffs do state that they were subjected to threats of harm,[2] but the tendered evidence makes plain that these were entirely threats of divine retribution. At her deposition, for example, Ms. Leal testified that the violence against her family which she feared would have come at the hands of God. "That was according to my new belief structure under the Church." (Vol. I, 73:27-74:1; 74:14-75:26.)

Plaintiffs also suggest they were prevented from leaving by their fear of disappointing the other Church members (e.g., Ms. Leal's Answers to Defendants' Interrogatories 7:1-4; Mr. Molko's Declaration in Opposition to Motion for Summary Judgment 4:1-4). But threats of social ostracism are not impermissible and, indeed, are constitutionally protected. See, e.g., *National Association for the Advancement of Colored People v. Claiborne Hardware Co.* (1982), —— U.S. ——, 102 S.Ct. 3409, 3430, 3433, 73 L.Ed.2d 1215.

Thus, the uncontroverted evidence establishes the absence of a triable issue of fact with respect to Plaintiffs' claim of false imprisonment: unquestionably Plaintiffs were not detained by force or by threats of force or of other unlawful conduct. Indeed, Plaintiffs admit in their Memorandum of Points and Authorities in Opposi-

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[2] In her Answers to Defendants' Interrogatoris, Ms. Leal describes the threats of harm which she experienced. "Death, illness, pain and suffering, disease of all possible sorts were believed to befall anyone who left the movement and including family, regardless of their love of God in a Christian manner." (4:12-16.)

In his Answers to Defendants' Interrogatories, Mr. Molko describes the threats of harm which he experienced. "Constant expression of how important it was not to leave the Church because it was spiritually devastating, in that, people become ill, they experienced difficulty dealing with people and/or their jobs. That people had died after the leaving the Church, with a clear indication that there was a positive correlation between leaving the Church and either becoming ill or dying in a rather peculiar way." (6a:9-12.)

tion to Motions of Defendants for Summary Judgment, "(a)bsent expert testimony, one might conclude, for example, that Plaintiffs joined the Unification Church of their own free will." (16:16-18.)

Plaintiffs contend, however, that the proffered evidence of their experts tends to show that they nonetheless were falsely imprisoned because their consent to remain with the Church was obtained when they were mentally incapable of exercising independent judgment to leave—that their consent to remain was the product of Defendants' "coercive persuasion." This evidence, however, is insufficient to create a triable issue for at least two reasons.

First, it does not appear that such "coercive persuasion," conducted without the use of force or the threat of force or other unlawful conduct, suffices to give rise to false imprisonment under the common law of this State. See pp. 10-11, *supra*. Plaintiffs rely upon *Parnell v. Superior Court* (1982), 119 Cal.App.3d 392, for the proposition that false imprisonment may occur without physical restraint. In that case, however, a seven year old boy was picked off the streets by two men in an automobile who promised him a ride home, but instead transported him to a distant part of the state, where the young boy stayed for a number of years. In considering whether the evidence made out the offense of kidnapping, the court made clear that in order for there to be an imprisonment there must be an "exercise of *force*, or express or implied *threat of force*, by which in fact the other person is deprived of his liberty or is compelled to remain where he does not wish to remain, or to go . . . ." (119 Cal.App.3d at 409.) (Emphasis added.)

The court in *Parnell* concluded that a kidnapping charge was supported by sufficient circumstantial evidence that the youth's detention had been effected by the threat of force. While noting the victim had enjoyed

considerable freedom of movement and association during the last years with his abductor, the court said it was not unreasonable to infer that the boy, who had been subjected to continual sexual abuse and taken far from his home and family, remained out of fear. The court said coercion could also be implied from the fact that the abductor had assumed the authority of a parent. The abductor had told the youth that his parents did not love him, that he had obtained legal custody, and that if he revealed his true identity he would be spanked. The court concluded that those facts raised a strong inference that the child, separated from his parenst at the age of seven, remained out of fear induced by the abductor. (119 Cal.App.3d at 409.) *Parnell* thus does not support the view that false imprisonment can be established without the presence of force or threats of force.

Analogous rules of law provide further support for the necessity of such improper conduct to establish coercion to which legal consequences attach. In order to establish compulsion or duress as a defense to a criminal accusation, an individual must show that he was subjected to commands giving rise to "a well grounded fear of imminent death or serious injury unless he complies." E.g., *United States v. Hearst* (9th Cir. 1977), 563 F.2d 1331, 1335 n.1. Similarly, the "duress" which the Civil Code recognizes for the purpose of rendering one's consent "not real or free" (Civil Code section 1567) is limited to "unlawful confinement" of a person or the "unlawful detention" of property (Civil Code section 1569); the related concept of "menace" includes the threat of such duress or the threat of "unlawful and violent injury to the person or property" (Civil code section 1570). While the mental state of the affected person is an essential element of duress, menace, and the more newly recognized form of economic compulsion, claims based upon such a state of mind arise only if that

mental state was induced by the wrongful conduct of another. See, e.g., *Louisville Title Ins. Co. v. Surety Title & Guaranty Co.* (1976), 60 Cal.App.3d 781, 799-806.[3]

Thus, under the current state of the law, Plaintiffs' proffered expert testimony does not create a triable issue of fact with respect to the claim of false imprisonment because Plaintiffs were induced to remain with the Church without the use of force or threats of force or of other unlawful conduct. And, whatever arguments can be made for expanding the definition of this tort to encompass insidious forms of mind control, such expansion

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[3] Decisions concerning the voluntariness of admissions obtained by law enforcement agents from criminal suspects also emphasize that it is threats (or promises of leniency) that render statements involuntary. E.g., *People v. Hill* (1967), 66 Cal.2d 536, 549. While improper coercion may be psychological as well as physical, intellectual persuasion is not the same as coercion. E.g., *People v. Ditson* (1962), 57 Cal.2d 415, 433. A confession obtained by "religious persuasion" or by exciting a suspect's religious anxieties, however, has been deemed involuntary. *People v. Adams* (1983), 143 App.3d 970. While this case attached legal consequences to psychological coercion which overcame the free will of an individual in the absence of force and threats of force, the decision was directed towards concerns very different from those involved here—control of police conduct. "Religious beliefs are not matters to be used by governmental authorities to manipulate a suspect to say things he or she otherwise would not say. The right to worship without fear is too precious a freedom for us to tolerate an invasion and manipulation by state officials of the religious beliefs of individuals, including those accused of crime." *People v. Adams, supra,* 143 Cal.App.3d at 988-989. Confessions obtained by such means are not thought unlikely to be true, but they are excluded because such methods offend underlying principles in the enforcement of our criminal law. *Id.* at 995. What is involved in the present case, however, is not limitation of governmental activity, but regulation of a religious organization the good faith of whose beliefs has not been challenged. While a broadened definition of involuntariness is consistent with First and Fifth Amendment values in the former context, relaxing the standards of individual responsibility in the latter would be inconsistent with important First Amendment values, as discussed below.

under the facts of this case would pose serious Constitutional questions, which is the second reason for which the expert testimony fails to preserve Plaintiffs' claim.

If "coercive persuasion" were sufficient to impose liability upon the Unification Church for false imprisonment, such liability would impinge upon the Constitutional protection of free association and freedom of religion. The decision of the First District Court of Appeal arising out of a similar factual background in *Katz v. Superior Court* (1977), 73 Cal.App.3d 952, provides particular guidance in this respect.

In *Katz*, the same experts on whom Plaintiffs rely gave remarkably similar testimony on behalf of the parents of members of the Unification Church seeking to impose conservatorships upon their adult children. In passing upon one of the several issues presented by that attempt, the court noted that "(i)n an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particularly religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured." (73 Cal. App.3d at 970.)

In *Katz*, the Court of Appeal held that if an adult is less than gravely disabled—i.e., unable to provide for his basic personal needs for food, clothing or shelter, see Welfare and Institutions Code section 5008(h)(1)—the strong interest in protecting that individual's liberty and freedom of action precludes application of the provisions of the Probate Code to appoint a conservator for that person. 73 Cal.App.3d at 983. Alternatively, the Court held that the individual's rights to freedom of religion and association under the federal and state constitutions compel the same conclusion "in the absence of such ac-

tions as render the adult believer himself gravely disabled as defined in the law of this state." *Id.* at 983-989.

Here the proffered expert testimony, virtually identical to that given in *Katz*, similarly fails to suggest any such grave disability as would have warranted withdrawing from Plaintiffs their own right to decide whether to remain at the Church encampment. While the relief which Plaintiffs request in this case would not so directly impinge on personal liberties as would the imposition of a conservatorship, nonetheless their cause of action for false imprisonment implicates the same values. See Morse, "Crazy Behavior, Morals and Science: An Analysis of Mental Health Law," 51 *So. Cal.L.Rev.* 527, 531-532 (1978). Permitting an award of damages against the Church on the basis of the uncontroverted facts in this case would indirectly threaten the same personal liberties and exercise of the rights of freedom of religion and freedom of association that were the subject of concern in *Katz*.

If the Church were subject to liability for damages whenever it were determined retrospectively that its attempts to influence a non-gravely disabled individual to join its faith—not by force or by threat of force or of other unlawful conduct—had been so successful that the individual had lost his ability to decline, a substantial restraint would be placed on the ability of both the Church and its present and prospective adherents to practice their religion. The testimony proffered by Plaintiffs does not identify any objective conduct engaged in by the Church which in itself is unlawful,[4] or any conduct engaged in by the Plaintiffs which would have alerted Defendants to the fact that Plaintiffs' consent to remain with the Church was no longer being freely

[4] Plaintiffs only attempt along these lines is their claim of fraud, discussed in the following section.

given. Thus, if Plaintiffs could proceed to trial on the evidence tendered in this action, the Church would be required to act at its peril, with no objective criteria to guide its conduct and subject to liability whenever it were later determined that an individual who had agreed to remain with the Church had lost the capacity to decide that he or she really wanted to leave.

The decision in *Katz* rests on the principle that an adult who is not shown to be gravely disabled must have the personal and individual right to determine for himself or herself whether to associate with a religious group. Despite the possibility of coercive persuasion, or "brainwashing," the right of the individual to make such choices is so important that it cannot be removed absent a showing of grave disability. In *Katz*, it was recognized that permitting the appointment of a guardian of the person absent such a showing would impermissibly infringe upon that right. So too would rendering that person's consent subject to repudiation if it were later determined that, although neither force nor threats of force or other unlawful conduct were utilized, the consent did not reflect the exercise of the individual's free will and judgment. If that could be done, in order to avoid potential liability, neither the Church nor any other association could ever rely upon a person's agreement to join, and the individual's ability to consent to join would be severely compromised. *Ibid.*

Moreover, regulation of religious activity is particularly suspect if that regulation involves an evaluation of the underlying religious beliefs. *United States v. Ballard* (1944), 322 U.S. 78, 87; *Founding Church of Scientology v. United States* (D.C. Cir. 1969), 409 F.2d 1146, 1159; *Van Schaik v. Church of Scientology* (D. Mass. 1982), 535 F. Supp. 1125, 1142-45. Imposition of liability for false imprisonment, even if upon a religious order, does not threaten to intrude into such an evaluation of beliefs when the individual is restrained either by force or by

threats of force or other unlawful conduct. When, however, the claim is that the restraint was imposed by "persuasive coercion," the situation is very different. The declarations of Dr. Singer and Dr. Benson reveal that both doctors rest their opinions in large part upon the view that Defendants' recruitment techniques involve "systematic manipulation of social influences" which, both doctors conclude, lead Plaintiffs to make choices they would not have made in the "free exercise of (their) own will and intellect."[5] But these are not statements which are either true or false; they are veiled value judgments concerning the entire outlook of the Unification Church.[6] What is "systematic manipula-

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[5] Both doctors examined the Plaintiffs long after the events in question. They did not reach their opinions concerning Plaintiffs' state of mind based upon a contemporaneous examination independent of their views of Unification Church methods, but seem to have reasoned backwards from their disapproval of those methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them.

[6] The danger of relying upon value judgments disguised as expert psychiatric opinion has been recognized in various contexts. See, e.g., *Smith v. Schlessinger* (D.C.Cir. 1975), 513 F.2d 462, 474-475, and authorities cited at 475 n. 45; *Wexler*, "Forward: Mental Health Law and the Movement Toward Voluntary Treatment," 62 *Cal.L.Rev.* 671, 673 (1974); Ennis & Litwack, "Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom," 62 *Cal.L.Rev.* 693, 726-729 (1974). While the limitations of expert testimony as a means of evaluating an individual's state of mind more typically have been considered in upholding the fact finder's right to reject the expert's opinion, e.g., *Mills v. Kopf* (1963), 216 Cal.App.2d 780, 785-786, expert testimony may be excluded altogether if based on matters which may not reasonably be relied upon. Evidence Code section 801(b), and Law Revision Commission Comment thereto. See, e.g., *People v. Luis* (1910), 158 Cal. 185, 195; *Roscoe Moss Co. v. Jenkins* (1942), 55 Cal.App.2d 369; *Long v. Cal-Western States Life Ins. Co.* (1955), 43 Cal.2d 871; 1 Ziskin, *Coping with Psychiatric and Psychological Testimony* vii (3d Ed. 1981). It has also been suggested that opinions in this area are not sufficiently beyond common experience to warrant expert testimony. Evidence Code section 801(a). See Morse, *supra*, 51 So.Cal. L.Rev. at 558-560.

tion" to some may be the only true outlook to others. As the Court of Appeal asked rhetorically in *Katz*:

> "When the court is asked to determine whether (a) change (of life style) was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith? (*Id.* at 987)

Under the admitted facts of this case, the trial of Plaintiffs' claim of false imprisonment would become a trial of the entire system of worship of the Unification Church. Testing the uncontroverted facts here by the principles applicable to regulation of acts of religious organizations and their members, as *Katz* requires, imposition of liability cannot be constitutionally countenanced.

FRAUD

In their Sixth and Eleventh Causes of Action, Plaintiffs allege that they were induced to stay with the Church by misrepresentations concerning the Defendants' identity and affiliations. Both Plaintiffs allege they did not learn Defendants were attempting to induce them to join the Unification Church until the program of isolation and indoctrination had been effectively instituted, when they no longer were capable of leaving, and that as a proximate result of Defendants' fraud they were induced to join and remain with the Church.

Unquestionably, there is evidence that for the first two or three weeks of the association of each Plaintiff with the group, Church members were less than candid about their connections with the Unification Church. At the outset, Defendants identified themselves as the "Creative Community Project," the nature of which was described vaguely and somewhat misleadingly. Certainly the Defendants did not originally disclose that they were affiliated with the Unification Church or Reverend Moon,

and there is evidence that they affirmatively misrepresented that fact, particularly to Ms. Leal.

Nonetheless, the evidence which has been tendered also establishes that the asserted misrepresentations and failure to disclose cannot be deemed material or to have induced either Plaintiff reasonably to have relied upon them. Plaintiffs' own testimony eliminates any triable issue of fact in this regard. The reasons for which both Plaintiffs have acknowledged they agreed to remain with the Church, long after they knew its identity, negate any claim that it was Plaintiffs' early unawareness of the affiliation of those with whom they were associating that caused them to remain.

By their own admissions, Plaintiffs agreed to join the group because their association satisfied personal concerns and anxieties both were experiencing. Ms. Leal had been disenchanted by her experiences in a "cold and impersonal" city, was looking forward to spending time in the country (for which she had a "great love"), and was particularly intrigued by the opportunity to "learn how a community gets together to actually accomplish something." On only her second day at Booneville, a lecturer admitted to her that the group did not want to scare people away and therefore was going to "keep quiet" about its true identity for awhile. Ms. Leal was pleased by the large doses of "attention and listening and care" bestowed upon her by people who she then believed —and still believes—were sincere. She was impressed by the commitment and hard work of the others and was anxious to prove herself worthy of their special attention. Ms. Leal found the relinquishing of individual responsibility and the acceptance of a group identity to be akin to the "joy of childhood." No later than three weeks after her initial encounter, the truth about the group's ties with the Unification Church had become clear to her but the information failed to dissuade her. By this time, as she put it, "I felt the means justified the ends." Ms.

Leal was aware that other recruits, who could not adjust to the group's schedule, had either left of their own volition or been asked to leave. She, however, decided not to leave, and firmly withstood her family's efforts to change her mind.

Mr. Molko, who had recently passed the Pennsylvania bar examination and come to San Francisco looking for a job, decided after only a few days that staying was more important than returning to the City to keep an appointment he had made. He was not taken in by anything said at the group's lectures, which he referred to as "repetitious, somewhat boring, and consisting of harmless homilies." By his own account, he stayed because he was enjoying rewarding one-on-one personal relationships with members of the group whom he respected and admired. No later than two weeks after his initial encounter, Mr. Molko knew that the group members were "Moonies," but he was not deterred by this information, and later resisted his family's efforts to make him leave.

Thus, both Plaintiffs have acknowledged that they joined the group for reasons which were not dependent upon the group's exact affiliation. And, unquestionably, when they learned the group was part of the Unification Church, they did not leave or attempt to leave, although they knew they might have done so. Their actions reflect that it was not their unawareness of Defendants' affiliation that caused them to stay.

Were the Plaintiffs nonetheless to be permitted to avoid the consequences of their decision, based on the opinion of the two experts that their actions did not reflect the exercise of their own free will and judgment, many of the same problems as discussed above would arise. Inquiry into whether otherwise healthy adults "freely" chose to associate with a religious body—the bona fides of which have not been questioned—necessarily would entail a judgmental evaluation of the beliefs and

practices of that body. For reasons discussed above, such an inquiry is constitutionally impermissible.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In the Fourth and Ninth Causes of Action for Intentional Infliction of Emotional Distress, both Plaintiffs incorporate prior allegations, and further allege that Defendants' conduct was intentional and malicious and done for the purpose of causing Plaintiffs to suffer humiliation, mental anguish, and emotional and physical distress.

The uncontroverted evidence, however, plainly negates this claim. Whatever value judgments one may place upon the Church's methods, Defendants' conduct was not extreme and outrageous in the sense required to support such a cause of action under California law. See, e.g., *Cortez v. Macias* (1980), 110 Cal.App.3d 640, 651-653; *Fuentes v. Perez* (1977), 66 Cal.App.3d 163; *Alcorn v. Anbro Engineering, Inc.* (1970), 2 Cal.3d 493, 497-499. In this respect, Plaintiffs' contentions are similar to ones rejected in *Van Schaik v. Church of Scientology, supra*, with the following apt observations:

> ". . . plaintiff alleges only that the Church exhorted her to sever family and marital ties and to depend solely on the Church for emotional support. Neither of these alleged courses of conduct constitutes the kind of extreme and outrageous actions which will support a claim for intentional infliction of emotional distress . . . . They are similar to the demands for single-minded loyalty and purpose that have characterized numerous religious, political, military and social movements over the ages."
>
> 335 F. Supp. at 1139.

RESTITUTION OF GIFT

In the Third Cause of Action for Restitution of Gift and Accounting, Plaintiff Molko seeks the return of a

$6,000.00 gift which he made to the Church when he admittedly was fully aware of its identity and connection with Reverend Moon. The Complaint alleges that the gift was made following "use of threats, deprivation of sleep, excessively long hours of work and other activities, and psychological manipulation," (Page 29), as the result of "undue influence" and "while Plaintiff was under the domination and control of Defendants" (Page 30).

In the Court's view, this Cause of Action comes closest to presenting a triable issue of fact. See 7 Witkin, *Summary of California Law* 5620-27 (8th Ed. 1974). Nonelesless, careful review of Mr. Molko's deposition testimony negates the conclusory allegations contained in the Complaint and establishes that Mr. Molko's condition at the time he made the gift was such that no inference can be drawn that the gift reflected the decision of anyone other than himself.

Mr. Molko testified as follows:

> "Q. What were the circumstances under which you made that contribution?
>
> "A. I was told that it was tax time and that the church was in desperate need of funds, and that it would be most—that the Heavenly Father would really appreciate, and really look favorably on seeing me give the money to the church."
>
> (Vol. III, 179:18-24.)

Mr. Molko later explained that he had been fasting in Booneville immediately before he made the gift, but the fast had been for only "a day or two" (Vol. III, 183, 187). He was asked to travel to San Francisco, which he did by himself; then:

> "Got to San Francisco and was presented with the fact—oh, we are desperately in need of money. Tax

time is coming up. Can you help us? The Heavenly Father is asking you to help us."

(Vol. III, 183:22-25.)

One of the two Church members in whom he had the greatest confidence told him she "thought I should do what I thought was best" and "was pretty much leaving it up to me"; he did not discuss the subject with the other (Vol. III, 180).

While Mr. Molko gave $6,000.00 to the Church, he was told that the Church would, as it did, pay his tuition for the Bar review course he was planning to take. The explanation, he testified, for his giving and then receiving back a portion of the money was the following:

"A. That you gave God money and then God, used your money rather than you using your money, and it worked better that way. In other words, you gave your money to God and then God can distribute your money. And that way, the spiritual world can work for you.

"Q. And at that time, that point you accepted that proposition?

"A. Yes."

(Vol. III, 191:15-22.)

Mr. Molko testified further that although he had some misgivings after agreeing to transfer the money, he did not ask to have it returned because "I really believed that there was evil forces lurking around. And that if I disturbed the spiritual world enough, that something could happen. I believed that. And therefore, I felt a terrible sense of guilt and fear to ask for something that I had supposedly given to God." (Vol. III, 192:3-195:23.) Plaintiff revealed that he had other funds (amounting to "several thousand" dollars) which were available to him while he was a member of the Church,

the existence of which he did not disclose to the Defendants. Referring to these funds, Plaintiff stated "I drew the line. . . . They were quite under my control, but they stayed where they were." (Vol. III, 192:3-195:23.)

Mr. Molko's unchallenged description of the circumstances under which he was persuaded to make the gift establishes that he was not in such a weakened physical or mental state that would permit a finding of undue influence, however great his present disenchantment with the Unification Church. See, e.g., *Estate of Anderson*, (1921), 185 Cal. 700, 707; *Estate of Fritschi* (1963), 60 Cal.2d 367, 372-373. At the time, Mr. Molko certainly was not gravely disabled. Moreover, evaluating the rationality of his views concerning the desires of "the Heavenly Father" which prompted the gift would raise many of the constitutional problems discussed above. See *Estate of Supple* (1966), 247 Cal.App.2d 410, *cert. denied*, 389 U.S. 280 (1967); cf. Tribe, *American Constitutional Law* 874-875 (1978).

Thus, for much the same reasons, expansion of existing legal principles to afford Mr. Molko, a competent 27 year old law school graduate, the right to demand the return of a religious contribution which he now regrets having made, must be resisted.

CONCLUSION

Despite the heavy burden that must be met to warrant Summary Judgment, such an Order is required in this case. "Brainwashing" and 'mind control" admittedly are frightening concepts. As our understanding of psychology expands, legal principles undoubtedly will expand commensurately to provide protection against unacceptable assaults on the integrity of the human psyche. Nonetheless, when dealing with the practice of religion, important constitutional considerations require the utmost of caution. Here, Plaintiffs have made no challenge to the bona fides of the religious beliefs of the Unifica-

tion Church. Both Plaintiffs were adults when first approached by Church members. They have admitted that they were never subjected to physical restraints, or to threats of violence or of unlawful conduct. Soon after their arrival, they knew full well with whom they were associating. Although they also knew that they could leave, they decided to remain. To absolve Plaintiffs of responsibility for their own decisions, and to permit them to impose liability upon the Church for having prevailed upon them to stay, is neither authorized by the current state of the law nor consistent with the Constitutional protection afforded all religious groups in our society. Since the underlying facts are uncontroverted and negate the possibility of recovery under these circumstances, Summary Judgment must be entered in favor of the Defendants.

DATED: October 20, 1983.

/s/ Stuart R. Pollak
STUART R. POLLAK
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants

and Related Cross-Actions.

CERTIFICATE OF SERVICE BY MAIL
(CCP 1013a(3))

I, _____, Deputy County Clerk and Deputy Clerk of the Superior Court of the City and County of San Francisco, certify that I am not a party to the within action;

That I served a copy of the attached ORDER GRANTING SUMMARY JUDGMENT by placing said copy in an enveloped addressed to the following:

Jeffrey S. Ross, Esquire
407 Sansome Street, Suite 400
San Francisco, CA 94111

Mark H. Pierce, Esquire
Kelly, Leal & Olimpia
697 East Remington Drive,
Sunnyvale, CA 94087

Vincent B. McLorg, Esquire
Lossing, McGlynn & McLorg
850 Montgomery Street
San Francisco, CA 94115

which envelope was then sealed and postage fully prepaid thereon, and thereafter was on ————————, deposited in the United States mail at San Francisco, California.

Dated: ————————

————————

APPENDIX D

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

S.F. No. 25038

MOLKO,
Plaintiff, Cross-Defendant and Appellant;

LEAL,
Plaintiff and Appellant

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants, Cross-Complainants, and Appellants;

MAXWELL,
Cross-Defendant and Respondent

ORDER DENYING REHEARING

PANELLI, J., did not participate.

Opinion modified.

Appellants' petition for rehearing DENIED.

The Request to Take Judicial Notice is DENIED.

[Filed Dec. 1, 1988]

/s/ [Illegible]
Chief Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

DECLARATION OF SAMUEL G. BENSON, M.D.

I, SAMUEL G. BENSON, declare and state:

I am a psychiatrist licensed to practice that medical specialty in the State of California.

As a psychiatrist I have had occasion to treat, often in a hospital setting, a significant number of patients suffering from psychological disorders secondary to their connection with various cults such as the UNIFICATION CHURCH of SUN MYUNG MOON.

I have found that the recruitment and indoctrination methods employed by these cults, and particularly by the UNIFICATION CHURCH, frequently results in the recruit being persuasively coerced into actions and activities which he would not commit or in which he would not engage in the free exercise of his own will and intellect. Many names have been put to this phenomenon such as "brainwashing", "mind control", "thought con-

trol" and "coersive persuasion." Perhaps the best term to be used in the description of the methods employed is the "systematic manipulation of social influence." Learned studies of the methods employed by Chinese communists under Mao Tse-tung reveal the methods employed to be substantially similar if not identical to those used by the UNIFICATION CHURCH and other cults.

I have examined DAVID MOLKO and TRACY LEAL in connection with their experience with the UNIFICATION CHURCH. I found that both of them suffered psychological damage, with continuing sequelae, as a result of their being victims of the afore mentioned systematic manipulation, incident to their recruitment into and confinement in the UNIFICATION CHURCH.

In the examination of MR. MOLKO and MISS LEAL I found that the deceptive recruitment methods employed in each of their cases was quite typical of the modis operandi used in UNIFICATION CHURCH recruitment. I further found that in these particular cases DAVID MOLKO and TRACY LEAL were each so coerced by the systematic manipulation employed so as to be rendered under the influence (and I must consider this to be undue influence) of those who were recruiting their membership and controlling their actions. I found that each of these young people were rendered incapable of exercising their own will and judgment by the time they learned that their recruiters were acting for the UNIFICATION CHURCH.

I further found, with reference to DAVID MOLKO and TRACY LEAL that they each suffered emotional distress from the very fact of having been deceptively manipulated and from their compliance with the requirements placed upon them to receive others in fundraising activities for the UNIFICATION CHURCH and to participate in the deception and manipulation of others in the recruitment process of the UNIFICATION CHURCH.

I further found that DAVID MOLKO and TRACY LEAL, having once come under the control of their recruiters in the UNIFICATION CHURCH, were effectively confined within that organization by virtue of the fact that they no longer had the judgment capacity to break free and leave.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness, I would competently testify thereto.

Dated: June 30, 1983

/s/ Samuel G. Benson, M.D.
SAMUEL G. BENSON, M.D.

APPENDIX F

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

No. 769-529

DAVID MOLKO and TRACY LEAL,
Plaintiffs,

vs.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Defendants.

And Related Cross Action

DECLARATION OF MARGARET THALER SINGER, Ph.D.

I, MARGARET THALER SINGER, declare and state:

I hold a Doctorate in clinical psychology and am licensed by the State of California to practice clinical psychology.

I am a professor in the Department of Psychiatry at the University of California, San Francisco. I am also a professor in the Department of Psychology at the University of California at Berkeley. My Curriculum Vitae is attached.

My interest in family studies brought me to an awareness, commencing in the late 1960's, of the emergence of a large number of cults. In this respect I have interviewed, as a psychologist, approximately 700 persons who

were either then or had been members of a cult. Approximately 260 of these persons had their cult connection with the UNIFICATION CHURCH of SUN MYUNG MOON. Most of the persons whom I interviewed in this respect had been members of or were then members of organizations which were religions or claimed to be religions.

A cult has various distinguishing criteria. Cult leaders are self-appointed messianic persons who claim to have special missions in life, which they claim have been given to them because they are unique. The veneration of the group form is directed toward the leader rather than toward God or abstract principles such as might be done in other kinds of organizations. Usually the cults have a double set of ethics in that a cult member is open and honest within the cult but learns that it is all right to deceive non-members. It is also usually true that the cult has only two real purposes in their existence. Those purposes are fundraising and recruiting other members.

The cults tend to be authoritarian in their power structure in contrast to the wider society of democracy in which we live. Cults also tend to be totalistic in the sense that they prescribe down to the tiniest detail how one should communicate with other members in the groups, non-members, the precise activities in which they should engage, etc.

As a senior psychologist in the research unit at Walter Reed Hospital, I studied American military personnel returning from the Korean War. I did a follow-up study, approximately five years later, to see what changes had come about in the lives of the individuals that had been interned as prisoners in Korea. I also had occasion to interview a number of clergy who had been civilian prisoners in mainland China and had been subjected in various types of influence processes and coercion processes in the Far East.

I have found, as have others, a striking resemblance between the methods of recruitment and control used by the cults and that used on some of the prisoners of war, including the clergy.

More particularly I have found that the recruitment and indoctrination methods employed by the UNIFICATION CHURCH are tremendously sophisticated. The recruiters engage in systematic manipulation of the social influences surrounding the potential recruit to the extent that the recruit, in fact, loses the capacity to exercise his own free will and judgment.

As a clinical psychologist I have examined both DAVID MOLKO and TRACY LEAL in connection with their recruitment and indoctrination into the UNIFICATION CHURCH and their experiences with that cult. I found that the deceptive practices for both recruitment and psychological confinement of these two young people were extremely typical of the practices of recruiters in the UNIFICATION CHURCH—particularly those from what is called the "Oakland family." I have found that both DAVID MOLKO and TRACY LEAL were rendered incapable of exercising their own will and judgment as a result of the systematic manipulations performed by the UNIFICATION CHURCH members. I found that the ability of DAVID MOLKO and the ability of TRACY LEAL to judge for themselves was greatly diminished by the methods employed and these two recruits were not capable of responding to the information that they had been deceptively recruited by Moonies with whom they would not otherwise have freely associated.

I further found, with reference to DAVID MOLKO and TRACY LEAL, that they each suffered emotional distress as a result of their being deceptively manipulated. They each also suffered emotional distress from the fact that they complied with the requirements placed upon them to deceive others in either fund-raising or

recruitment activities on behalf of the UNIFICATION CHURCH.

I also found that as a result of the systematic manipulation of social influences performed by the UNIFICATION CHURCH recruiters, DAVID MOLKO and TRACY LEAL were each deprived of the judgment capacity to disassociate themselves with the UNIFICATION CHURCH and its members.

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness, I would competently testify thereto.

Dated: July 6, 1983

/s/ Margaret Thaler Singer
MARGARET THALER SINGER

APPENDIX G

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF SANTA CLARA

No. 615484

KENNEDY LOWDER; JUDITH LOWDER; PETER HARRIS; PATRICIA HARRIS,

Plaintiffs,

vs.

SNAP-ON TOOLS CORP., *et al.*,

Defendants.

DECLARATION OF MARGARET SINGER IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF ISSUES

Date: July 27, 1988

Time: 9:00 a.m.

Dept.: 10

I, Margaret Singer, Ph.D., declare:

1. I am a licensed Clinical Psychologist and an Adjunct Professor in the Department of Psychology at the University of California, Berkeley. I have been a practicing psychologist, teacher, and researcher for over forty years. I am a former President of the American Psychosomatic Society. For many years, I have been involved

in the study of communication and influence techniques. I was a consultant to the Massachusetts Institute of Technology, School of Industrial Management, in follow-up studies of United States prisoners of war from the Korean War. More recently, I was awarded the Leo J. Ryan Memorial Award for research on cults. My research has centered upon situations in which there is a systematic manipulation of psychological and social influence techniques by a stronger partner over a weaker partner, usually in a context in which the stronger partner presents, or appears to be, a reliable and trustworthy authority figure. My curriculum vitae is attached hereto as Exhibit "A."

2. I have met and interviewed Peter Harris and Kennedy Lowder, as well as several other Snap-On dealers and field managers. I have reviewed Snap-On sales literature and many of the declarations on file in this action. Based on this personal investigation and my expertise in the field, it is my opinion that Snap-On Tools Corporation employs techniques of psychological manipulation to influence the actions of its dealers. In particular, these techniques were used to overcome the wills of Peter Harris and Kennedy Lowder when they signed termination agreements.

3. Normal individuals subjected to coordinated programs of coercive influence and psychological manipulation can be psychologically managed and dominated without knowing they have been manipulated. A coordinated program of intense behavior control may occur in the context of a business relationship. Otherwise normal and adequately functioning individuals can be particularly susceptible to psychological manipulation when they possess a combination of ordinarily desirable character traits: a trusting nature, respect for authority, and a desire for approval. Persons who are not "street-wise," who have not been "conned," who are not skeptical by nature, or who because of training or experience, act out

of innocence, may be abused by others applying coordinated programs of coercive influence and behavior control.

4. Organizations that by design intend to manipulate others usually do so by controlling, suppressing, and misrepresenting material information. The organization seeks to make individuals dependent on the organization, to isolate the individual from other sources of information, and to make continuous appeals to and attacks on the psychological stability of the individual.

5. A well established, prestigious organization enjoying the stamp of respectability may engage in a coordinated program of intense behavior control with a great likelihood of success, as such organizations will not be regarded with suspicion and will not likely engender doubts. This is particularly true in a business context between unequal partners, such as a well-known and prosperous company soliciting the participation of an unsophisticated individual for a business venture. The company, if it chooses to be manipulative, can build upon the inherent respect and trust of the ordinary citizen in such a business venture. In my opinion, Snap-On's repeated statements that it is a "Fortune 500" company in communications with dealers suggests that Snap-On uses its respectability to try to manipulate its dealers.

6. A business organization utilizing coercive influence may spread its control into far more than just the business life of a weaker partner. This encroachment is known as "multiple invasive relationships." These are invasions by the stronger partner into the home life, social life, emotional and other private areas of a weaker partner's daily existence. These invasions make the organization capable of influencing all areas of an individual's life. This type of invasive conduct is beyond the normal bounds of business relationships. Snap-On engaged in such multiple invasive relationships, among

other ways, when it told dealers' spouses that the dealers were failing because they were not working hard enough.

7. When an organization intentionally institutes and carries out a coordinated program of coercive influence and behavior control and invades all areas of an individual's life, it can affect a person's psyche. The object's personal, social, and family life can be seriously harmed. An individual may be led, influenced, or coerced to carry out acts that are not in his best interests. A program of coercive influence can lead the weaker partner to comply with the stronger partner's will, without the weaker knowing that he has been influenced at all.

8. Since coercive methods make the process of persuasion obvious, subterfuge is often used. The persuader tries to keep his subject unaware of the intention to elicit compliance.

9. The ability to fend off persuaders is reduced when one is rushed, stressed, uncertain, uninformed, and fatigued.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: June 24, 1988

/s/ Margaret T. Singer
MARGARET SINGER

APPENDIX H

SUPERIOR COURT
ALAMEDA COUNTY, CALIFORNIA

No. 554520-8

DOLE

v.

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY

(April 12, 1984)

DEPOSITION OF MARGARET SINGER

* * * *

[168] A. Yes, I do.

Q. What is your definition of brainwashing?

A. My definition of brainwashing is essentially the same one that I have presented to you as the conditions which I call the [169] conditions necessary for the systematic manipulation of psychological and social influence.

Q. So are you saying, then, from your perspective the term brainwashing is synonymous with the systematic manipulation of psychological and social influences?

A. I'm saying it is subsumed under the broader heading that I offer.

Q. That's why I asked you specifically whether or not you have an opinion as to whether or not Barbara Dole

was subjected to brainwashing. Since you said this was subsumed, I want to find out whether she comes within that category as well?

A. If a person—and my answer would be yes. If I were able to ascertain that the person asking such as when you asked, I want to know what your definition of brainwashing was, because I find oftentimes people have very hazy or mistaken or—

Q. I understand.

A. Odd personal definitions of a term such as this—that.

Q. Now, I have asked you today would you please give me your definition of brainwashing. I understand it's subsumed within a larger category?

A. My definition of brainwashing is that it is the systematic manipulation of psychological and social influence under certain psychological and special circumstances and conditions.

Q. Could you please give me the psychological and social conditions which you are referring to in your last answer?

A. First of all, that the person or organization that's engaging in the so-called brainwashing or systematic manipulation of special and psychological influence gained [170] control over the person's social and/or physical surroundings, but especially gained control over the person's time.

Secondly, the individual, individuals or organization that's engaging in brainwashing as a part of the longer term of the systematic manipulation to which I just referred, the organization gains control over the person's time especially. And by gaining control over their circumstances and social surroundings creates a sense of powerlessness in the person.

Q. Are there any other conditions?

A. Yes.

Q. What are they?

A. And that through the manipulation of rewards, punishments and experiences begins to and eventually ac-

complishes suppressing the overt display of certain aspects of the social self that the person brought to the organization. And that the organization manipulates rewards, punishments and experiences in such ways as to elicit the behavior that the management wants from the person. Usually, the person has to be unaware that they are being manipulated.

Further, the circumstances are usually those in which there is no criticism of the management. It has to be a pretty authoritarian and totalitarian power structure within the organization so that no criticisms from the people or person being exposed to this systematic is possible. There is no correction upward. Usually, a tremendous suppressing of anything other than the general desires of management.

Q. You are finished?

A. Yes.

[171] Q. What is your definition of coercive persuasion?

A. Generally, that circumstances similar to what I have just outlined have been present in the milieu where a person is. And that through various psychological and social techniques, the person is coerced into allowing themselves—themselves to be persuaded by the management level people who are in charge of the conditions.

Q. Is there any difference between coercive persuasion and brainwashing?

A. Usually not.

Q. When you say usually not, is there any difference at any time?

A. Not in my definitions where I have specified the above mentioned features.

Q. Is there any difference between coercive persuasion and your definition of the systematic manipulation of psychological and social influences?

A. Not when the circumstances are spelled out as I have above spelled them out.

Q. So what you are saying is the definition which you gave today in respect to the question of brainwashing is the same definition you use for purposes of defining coercive persuasion?

A. Yes.

Q. And it's also the same definition you use for purposes of the term which you have identified as systematic manipulation of psychological and social influences?

A. Yes.

Q. And there are no differences than in your use of those [172] three terms as you define each of them, is that correct?

A. As I define each of them.

Q. As long as we use your definition for brainwashing, coercive persuasion, or systematic manipulation of psychological and social influences, we are talking about the same phenomena?

A. Yes.

* * * *

Supreme Court, U.S.
FILED
MAY 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1600

In The

Supreme Court of the United States

October Term, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY and NEW EDUCATION DEVELOPMENT SYSTEMS, INC.,

Petitioners,

v.

DAVID MOLKO and TRACY LEAL,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

STANLEY F. LEAL
KELLY, LEAL & DAVILLA
697 East Remington Drive
Sunnyvale, CA 94087
(408) 735-8530

Counsel for Respondent Tracy Leal

May 1, 1989

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

As stated by the Supreme Court of the State of California, the legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving non-members in subjecting themselves, without their knowledge or consent, to coercive persuasion – and whether the church's conduct under that theory also gives rise to an action for intentional infliction of emotional distress.

PARTIES TO THE PROCEEDING

All of the parties are listed in the caption.

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OTHER AUTHORITIES

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STATEMENT

The Unification Church has for a number of years followed a recruitment scheme in which it depended upon fraud and coercive persuasion for its success. This scheme is fairly well known. Young, vulnerable, idealistic men and women are purposely deceived so as to subject them, without their consent, to carefully employed coercive persuasion techniques. These include isolating the recruit, subjecting the recruit to constant surveillance, preventing communication with anyone except one of the recruiters, deprivation of any outside information source, preventing the recruit from any opportunity to reflect, subjecting the recruit to concocted struggle and confession sessions and discouraging any questioning by the recruit. The purpose of all this is, of course, to reduce the victim to a state where their real capacity to decide and to act thereon has been effectively destroyed.

The recruitment of Tracy Leal is a classic Moon operation in deception. She was a 19 year old college student traveling from her home in the San Francisco Bay Area to Eureka, California, so as to investigate the possibility of matriculating at Humboldt State College. This travel was by bus and necessitated a change of buses at San Francisco. As she proceeded into the San Francisco bus station with her backpack on she was the ideal target for the Moonies who regularly man that station in their recruitment operation. The Moon recruiters claimed to be members of an organization called Creative Community Project. In response to Tracy's direct questions they deceived her into believing that their organization had no religious connection and flatly denied, in response to Tracy's question, that they were the Moonies. Under

these circumstances she went with them to their Bush Street house in San Francisco where she was subjected to the familiar Moon recruitment procedure. She was showered with attention by other young people while prevented from communicating with other potential recruits, given a lecture dealing vaguely with social injustice, shown slides of young people enjoying themselves in a farm setting, and invited to spend the weekend away from the bustle of other activities with them on their property in the country (at Boonville). "In fact, our bus is leaving right now." At Boonville the recruits were subjected to a constant unremitting round of activities, under surveillance which includes being accompanied to the bathroom, enormous peer pressure to "stay a few more days," and all the other mind numbing manipulations for which the Moonies have become infamous. During the next three weeks Tracy did twice ask whether or not this was the Moonie organization. This was twice denied. Only after her recruiters were satisfied that her ability to think independently had been adequately impaired was she informed that indeed this was the Moon organization. App., 8, 9 and 10.

Tracy Leal remained under the domination and control of the petitioners for the next approximate four months. App., 10.

Tracy Leal has, resultingly, brought an action for the damages she suffered as a result of the fraud committed by the petitioners and as a result of the intentional infliction of emotional distress by the petitioners.

The trial court and the California Court of Appeals concluded that the fraud committed by the petitioners

was in effect cured when Leal stayed with the Unification Church after learning of its identity. These courts refused to give consideration to Leal's proffered evidence that her staying with the Unification Church was anything other than voluntary. App., 70 and 109. These courts also recognized no question of fact as to whether or not the scheme employed by the petitioners was so extreme and outrageous so as to support a cause of action for intentional infliction of emotional distress.

The Supreme Court of the State of California in a decision concurred in by all of the then sitting California Supreme Court Justices (dissenting Appellate Justice Anderson was sitting in the place of Justice Edward Panelli who had recused himself) reversed the Court of Appeals. In essence, the Supreme Court of California made the following determinations:

1. The defendants can be held liable on a cause of action in fraud for deceiving the plaintiff into subjecting herself, without her knowledge or consent, to coercive persuasion;

2. It is a question of fact as to whether plaintiff Leal was subjected to coercive persuasion and if so, if that coercive persuasion prevented her from voluntarily remaining with the defendants after she learned of their true identity; and

3. It is a question of fact as to whether the recruitment scheme employed by the defendants constitutes such extreme and outrageous conduct as to warrant liability in tort for the intentional infliction of emotional distress.

PETITIONERS' REASONS FOR GRANTING THE REQUESTED WRIT ARE ILLFOUNDED

Petitioners claim that the decision of the California Supreme Court is inconsistent with the decisions of this court. That inconsistency is far from apparent. The principal case cited by the petitioners is *United States v. Ballard*, 322 U.S. 78 (1944). In *Ballard* this court approved the prosecution of the leader of a religious movement for mail fraud which was based on claimed beliefs by that leader which were not sincerely held by him.[1]

Ballard of course stands for the proposition that the truth or validity of religious beliefs cannot be scrutinized in the court. It must be emphasized that the truth or validity of the theology of the Unification Church is not called into question by respondent Leal. In no way do plaintiff's actions for fraud or emotional distress implicate religious belief. The truth or validity of those beliefs

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[1] In *United States v. Ballard* the prosecution petitioned successfully to this court for a Writ to the Circuit Court of Appeals which court had reversed a conviction in the trial court. The conviction was based on the finding that defendant did not sincerely believe in the truth of the doctrines forming the basis for their mailed claims and money solicitations. The U.S. Supreme Court in effect approved of the actions of the trial court and remanded for further proceedings the consideration of the other issues the defendants claimed to exist. The five Justices concurring in the opinion thus approved of the conviction but did not reinstate it because the defendant had other constitutional questions which they wanted to present to the court of appeals. Of interest, three other Justices also approved of the conviction and wanted merely to reinstate the conviction in the trial court. There was one dissent.

are in fact irrelevant to the present action. The California Supreme Court recognized this. App. 22.

The California Supreme Court, in determining that plaintiffs were entitled to prove that they were indeed victims of coercive persuasion, recognized that this phenomenon had a basic theory which was set forth in detail in the case of *Peterson v. Sorlien*, 299 NW 2d 123 (Minn.) cert denied, 450 US 1031 (1981).[2]

The California Supreme Court decision is of course totally consistent with this court's ruling in *Cantwell v. Connecticut*, 310 US 296 (1940). In *Cantwell* this court recognized that while religious belief is absolutely protected, religious conduct remains subject to regulations for the protection of society. The court stated at page 306 "Nothing we have said is intended remotely to imply that under the cloak of religion, persons may with impunity commit frauds upon the public." See also *Van Schaick v. Church of Scientology of California Inc.*, 535 F. Supp. 1125 (1982); *Turner v. Unification Church*, D.R.I., (1978) 473 F. Supp. 367, 371, Aff'd, 602 F. 2d 458 (1979).

Petitioners quarrel with the California Supreme Court's determination that defendants can be held liable for the damages suffered by respondents resulting from defendants' fraud. Respondent of course seeks damages for physical, mental and emotional distress and all other

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[2] In *Peterson v. Sorlien* the court recognized coercive persuasion and approved the trial court's determination that the plaintiff had no volitional capacity to refuse to consent being with her parents and others because of the effects of coercive persuasion worked on her by a "cult." This court denied certiorari.

consequential damages appropriate under the proof adduced at trial. The Supreme Court has appropriately allowed respondents to proceed with proof that they were deceived by the defendants' fraud and to subjecting themselves, without their knowledge or consent, to coercive persuasion and all other damages which are consequent thereto.[3]

Petitioners take the position that a fraud cause of action can seek damages only for out-of-pocket money. There is no basis for such an assumption. One of the more significant elements of damages suffered by respondent Leal was the stress suffered by her by her required practice of the Moonie art of "heavenly deception" in solicitation of funds and in recruiting prospective members.[4]

---

[3] Plaintiff in her complaint, paragraph 59, alleges "as a proximate result of the acts of defendants, and each of them, plaintiff was injured in her health, strength, and activity, sustaining injury to her nervous system and person, all of which injuries have caused plaintiff to suffer extreme and severe physical pain and mental anguish, all to her general damages, according to proof." Plaintiff in paragraph 75 alleges "as a proximate result of defendant's fraud and deceit and the facts herein alleged plaintiff was induced to join the Unification Church and to work extremely long hours and beg on the streets for the Unification Church without compensation . . . " Plaintiff in her prayer asks for general and compensatory damages according to proof and special damages according to proof (as well as punitive damages).

[4] In her response to petitioners' interrogatory number 15 Leal sets forth how she was instructed in heavenly deception: The regular witnessing process was used on me. We are told to smile, always be positive and never complain, because to complain is to be selfish. We were told to size up a person, to look

(Continued on following page)

The assertion by petitioners that respondents have never claimed that the "persuasion" resulted from anything other than emotionally compelling speech is simply wholly without foundation. Please see respondent's statement of facts.

The California Supreme Court decision is carefully and narrowly constructed. It does not appear to impinge upon legitimate recruitment activities of any religious organization. As the Supreme Court recognizes, to

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(Continued from previous page)

for people who appeared to be on vacation, away from home. We were to pay particular attention to people in their late teens or early twenties, especially those that had a backpack. Tell them what they would want to hear, we were told. Try to connect with them in some way. Perhaps you came from the same city or state, went to the same college, had a common interest in a sport or hobby. The object was to try to win the confidence and trust of the individual. We were told to keep our membership in U.C. a secret. If we were asked about a religious affiliation we were told to just say that we were nondenominational in character and that religion was simply not very important. We were told to stress our "international character." That we had many people who "lived with us" who were from foreign countries. Always stress that the people that lived in "our house" were professionals and that they *all* had outside interests and jobs and that they would get together around the "supper table" to discuss "shared aspirations and feelings." The object was to get the person over to dinner no matter what. It is called "heavenly deception," the process by which one has the right to alter the truth – lie – if that is what it would take to get someone to dinner and beyond. It is rationalized as being perfectly fine because we are following a higher law, the spiritual/God-sent law; all in the name of saving the person spiritually from himself.

require the defendants to refrain from fraudulent recruiting practices places a burden upon them. In weighing that burden against the interest of the state in warding off the "substantial threat to public safety, peace and order" which this fraudulent conduct poses, the decision is obvious. App. 25. As the court notes, the burden of refraining from fraud is not really substantial. "Being subject to liability for fraud does not in any way or degree prevent or inhibit church members from operating in their religious communities, worshiping as they see fit, freely associating with one another, selling or distributing literature, prostitizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population." App. 25.

Respondents do not ask the courts to inhibit persuasive speech – or even to condemn the systematic manipulation of the social and psychological influences which one might bring to bear on another. Plaintiffs action is for damages resulting from fraud and intentional infliction of emotional distress. The systematic manipulation, or coercive persuasion, is significant in this case on the following basis:

1. Proof of coercive persuasion vitiates the supposed voluntary consent by respondent to remaining with the defendants.

2. The coercive persuasion is part of the outrageous scheme by which defendants have intentionally distressed and damaged respondent Leal.

It is true that several courts have considered a scheme of coercive persuasion used by the Unification Church. In *Holy Spirit Association for the Unification of World Christianity v. Harper and Rowe*, 420 NYS 2d 56 (1979), Unification Church sued for libel over comparison

between Nazi's and the Reverend Moon. Allegations were made by the author that the Unification Church indoctrination techniques for brainwashing were a danger to American society. In granting judgment for the author, the court noted the evidence and extensive research and sources of the author which show the court "sufficient parallel between the Nazi movement, obedience to a messianic leader, etc., and evidence of brainwashing," so that such statements of facts would be appropriate. Of interest, the court also noted that the allegations of brainwashing did not involve questioning of the validity or truth of the beliefs of the Unification Church theology.

In *Warder v. Board of Regents of the University of State*, 53 NY 2d 186, 423 N.E. 2d 352; 440 NYS 2d 875 (1981) an inquiry into whether a particular Unification Church seminary should be denied a provisional charter, the court noted an investigation over the seminary using brainwashing or a policy of deception in fund raising or recruitment was a proper lawful inquiry. " . . . petitioners do not and cannot dispute that the Board could validly deny a provisional charter to an institution that engages in 'brainwashing' and deception . . . "

In the case of *Lewis v. Holy Spirit Association*, 589 F Supp 10 (D. Mass. 1983) a member of the Unification Church brought an action to recover damages arising out of an alleged breach of contract and based upon the torts of brainwashing and indoctrination. The District Court determined that there was no cognizable action on the basis of an alleged tort of brainwashing and indoctrination. The court noted that this might form the basis for an action for intentional infliction of emotional distress but it was not sufficiently pleaded.

In *Meroni v. Holy Spirit Association,* 506 NYS 174 (NY App. Div. 1986) parents brought an action against the Unification Church for their son's suicide allegedly the result of brainwashing. The court determined that the Unification Church's recruitment procedure is conduct for which the church may be held liable. The court however did determine that from the evidence brought before it the deceased did participate in the Unification Church's activities voluntarily – and thus there was no cause of action which the parents could prosecute. Also, in *Meroni,* there was no allegation of or facts supporting, a claim of fraud.

Petitioners would obviously wish that the entire phenomenon of coercive persuasion be striken from our society and our lives. Respondent wishes as well that the fact of coercive persuasion did not exist. The fact is that it does exist and is recognized authoritatively. *THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (3RD EDITION) (DSM III) (1980)* recognizes coercive persuasion:

> 300.15 ATYPICAL DISSOCIATIVE DISORDER
>
> This is a residual category to be used for individuals who appear to have a Dissociative Disorder but do not satisfy the criteria for a specific Dissociative Disorder. Examples include trance-like states, derealization unaccompanied by depersonalization, and those more prolonged dissociated states that may occur in persons who have been subjected to periods of prolonged and intense coercive persuasion (brainwashing, thought reform, and indoctrination while the captive of terrorists or cultists).

As examples of the current recognition of this phenomenon, coercive persuasion was the heart of the

defense in *U.S. v. Patti Hearst* and the heart of the prosecution in *People v. Charles Manson*. It is thought that, after Jonestown, most Americans accept the fact and the danger of coercive persuasion.

It should be noted that it is the respondent, and similar involuntary recruits, who need constitutional protection. It is their freedom of thought, of association, and of religious choice which are deprived through the fraud and recruitment scheme of the Unification Church.

> "The Unification Church cannot seek the protection of one constitutional amendment while it allegedly deprives citizens of the protection of other constitutional guarantees." *Turner v. Unification Church*, supra, at 372.

The rights of respondent Leal in this case to free choice and the free exercise of religion are of paramount importance to society.

> "For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced . . ." *Abbott v. Detroit Board of Education*, 431 US 209, 234-35 (1977).

The opinion of the Supreme Court of the State of California in the present case is an excellent carefully considered determination worthy of that prestigious court. The Petition for Certiorari should be denied.

Respectfully submitted,

STANLEY F. LEAL
KELLY, LEAL & DAVILLA
697 East Remington Drive
Sunnyvale, CA 94087
(408) 735-8530

Counsel for Respondent Tracy Leal

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,

v.

DAVID MOLKO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

---

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* AND BRIEF OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), THE AMERICAN BAPTIST CHURCHES IN THE U.S.A., AND THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

EARL W. TRENT, JR.
House Counsel
National Ministries
American Baptist Churches
in the U.S.A.
Route 363 and First Avenue
Valley Forge, PA 19482
(215) 768-2487
Counsel for Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), THE AMERICAN BAPTIST CHURCHES IN THE U.S.A., AND THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

The National Council of Churches of Christ in the U.S.A., James E. Andrews as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), The American Baptist Churches in the U.S.A., and the Catholic League for Religious and Civil Rights hereby request, pursuant to Rule 36 of the Rules of this Court, leave to file the accompanying brief as *amicus curiae* in

support of Petitioners.* The National Council of Churches of Christ in the U.S.A. ("National Council of Churches") is a cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States. It has an aggregate membership of over 40,000,000 people. The Presbyterian Church (U.S.A.) is a national, Christian denomination with churches in all fifty states. Through its antecedent religious bodies it has existed as an organized religious denomination within the current boundaries of the United States since 1706. It now has approximately 2,950,000 active members and approximately 11,500 congregations organized into 172 presbyteries and 16 synods in regular gradation. The American Baptist Churches in the U.S.A. is composed of four principal national agencies, and thirty-seven regional, city and state organizations in the United States, who represent some six thousand congregations with approximately 1.5 million members. Although the Presbyterian Church (U.S.A.) and the American Baptist Churches in the U.S.A. are members of the NCC and are represented by it in this brief, they join in their own right as well on the basis of their own individual denomination policies. The Catholic League for Religious and Civil Rights is a non-profit voluntary association, nationwide in membership, organized to promote good will and harmonious relations in the community, combat all forms of religious prejudice and discrimination, and to defend the rights and sanctity of each human life.

Amici believe the ruling of the California Supreme Court challenged in the petition has had, and will continue to have, a serious chilling effect on religious proselyting and conversion in California and elsewhere. Further, *Amici* believe that the Court, in deciding whether

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* Pursuant to Rule 36, *amici* have obtained the written consent of the Petitioners, but were denied consent to file by respondents. Petitioners' letter of consent has been filed with the Clerk of the Court.

to grant the petition, would benefit from its views as to how the new tort of "coercive persuasion" affects the rights of its members to freedom of speech and free exercise of religion protected by the First Amendment.

For the foregoing reasons, *amici's* motion for leave to file a brief in support of petitioners should be granted.

Respectfully submitted,

EARL W. TRENT, JR.
House Counsel
National Ministries
American Baptist Churches
in the U.S.A.
Route 363 and First Avenue
Valley Forge, PA 19482
(215) 768-2487
Counsel for Amici Curiae

QUESTION PRESENTED

Amici Curiae will address the following question:

Whether an adult who hears persuasive religious messages from church representatives and as a result embraces the beliefs of the church and becomes a member can subsequently hold the church liable in tort and recover damages based on the church's non-violent and non-threatening speech and practices which persuaded the individual to convert to the church's religious beliefs.

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BRIEF OF *AMICI CURIAE*

INTEREST OF *AMICI CURIAE*

1. The National Council of Churches of Christ in the U.S.A. ("National Council of Churches") is a cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States. It has an aggregate membership of over 40,000,000 people. The National Council of Churches submits this brief as *amicus curiae* because the ruling of the California Supreme Court challenged in the petition has had, and will continue to have, a serious chilling effect on religious proselyting and conversion in California and elsewhere.

The National Council of Churches submits this brief even though its Faith and Order Commission found that the doctrine of the Holy Spirit Association for the Unification of World Christianity and New Education Development System, Inc. (collectively, the "Unification Church" or "Church") is not consistent with that of traditional Christian theology as believed through 20 centuries and it is not eligible for membership in the NCC. The brief is submitted pursuant to the following policy adopted in 1955 by the Governing Board of the National Council of Churches[1]: "The National Council of Churches defends the rights and liberties of cultural, racial and religious minorities." Policy Statement: Religious and Civil Liberties in the U.S.A.

2. The Presbyterian Church (U.S.A.) is a national unincorporated religious association which has existed as an organized Christian denomination within the current boundaries of the United States since 1706. It is composed of approximately 2,950,000 active members belonging to approximately 11,500 congregations organized into

[1] The Governing Board is a deliberative body of about 250 persons chosen by the member denominations in proportion to their size and support of the Council. Positions taken by the Governing Board do not necessarily reflect the views of all members of the National Council of Churches.

172 presbyteries and 16 synods in regular gradation. Through its highest governing body, the annual General Assembly, the Presbyterian Church has repeatedly confirmed its understanding of the church as a missionary entity with a divine call to the conversion of all people to the faith of the church. While the Presbyterian Church (U.S.A.) does not share the same belief system as the Unification Church, and its General Assembly has seriously questioned whether or not the Unification Church should be considered a Christian organization because of the content of its theology, the policies and views of the Presbyterian Church (U.S.A.), as expressed by its General Assembly, are in general agreement with the view of this brief with regard to the nature of religious conversion and the rights of religious bodies under the Constitution of the United States to engage in proselytism and to seek the conversion of others to its views by open and non-coercive witness and persuasion. The Presbyterian Church (U.S.A.), by the careful procedures of its own rules, has chosen to become an *amicus curiae* in this case because of the issues of freedom of speech and religion that are involved.

3. The American Baptist Churches in the U.S.A., through its General Board in December of 1986, adopted the American Baptist Policy Statement on Church and State which affirms that: "The Church has the duty and right to worship, educate and witness through evangelism and prophetic action; to provide spiritual nurture, encourage self-discipline and teach morality."

Although American Baptists disagree with many of the doctrines and practices of the Unification Church, the issues presented in this case are basic to Baptist principles of religious liberty and separation of church and state.

4. The Catholic League for Religious and Civil Rights is a non-profit voluntary association, nationwide in membership, organized to promote good will and harmonious relations in the community, to combat all forms of reli-

gious prejudice and discrimination, and to defend the rights and sanctity of each human life.

STATEMENT

This case involves the question of whether an adult who hears persuasive religious messages from church representatives and as a result embraces the beliefs of the church and becomes a member, but who subsequently becomes disaffected and claims he was deceived and coerced into religious conversion, can hold the church liable in tort and recover damages (including monies contributed to the church while he or she was a practicing member). In the ruling challenged in the Petition, the California Supreme Court held that such an action can be maintained. *Amici* assert that the ruling below would result in undue regulation of religious proselyting and would subject religious conversion and religious beliefs to judicial scrutiny. For these reasons it violates First Amendment protections of speech and free exercise of religion and should be reversed.

It is important to *amici*'s position that the case involves persuasion solely as a result of religious messages —*i.e.*, speech and free exercise of religion. The case does not involve violence or threats of violence, physical deprivation or coercive restraint. Nor does it involve minors or mentally incompetent persons. Further, there is no suggestion that the proselyting efforts complained of were due to any pecuniary motive or, indeed, were for any purpose other than exposing the respondents to the beliefs of the Unification Church in the hope of converting them to the faith.

At the outset, it is also important to make clear that *amici* neither endorse nor defend deception or coercion in proselyting. *Amici*'s concern is that the effects of the ruling below cannot be limited to prohibiting deception and coercion. The factual allegations on which the court permitted respondents to argue "deception" and "coercion" call into question wholly legitimate practices employed by virtually all proselyting religions. *Amici*

strongly oppose this sweeping encroachment on First Amendment protections of freedom of speech and religion. What particularly concerns *amici* is the harm that delay in reviewing the question presented will inflict upon their religious practices. Aside from the obvious injury that a public trial will cause petitioners by exposing this religion to the adversary process, the mere presence of the court's ruling places a cloud over proselytizing by every religion in California. *Amici*'s religious freedoms will be jeopardized every day that "coercive persuasion" remains a viable theory of tort liability. Only review by this Court at this time can ensure that *amici*'s right to free exercise of religion is guaranteed.

A. Respondents' Dealings With The Unification Church

The case involves proselyting by members of the Unification Church and the conversion and subsequent disaffection of respondents David Molko and Tracy Leal. While on a street in San Francisco, respondent Molko was engaged in conversation by two members of the Unification Church who invited him to a dinner. Following dinner, he decided to travel to a Church retreat at Boonville, and later accepted an invitation for further lectures and activities at a Church facility called "Camp K." It is undisputed that he was always free to leave, but continually chose not to do so. Molko alleges he first learned of the group's identity twelve days after the initial exchange with members of the Church. He chose to remain with the Church and some months later formally joined it. He left the Church only after being kidnapped and "deprogramed."

Respondent Leal's experience with the Church was substantially similar: she was approached by members of the Church, accepted an invitation to dinner, and chose to participate in the activities at Boonville and Camp K. The misrepresentation alleged by Leal also occurred in the initial stages of her association with the Church when, in response to her questions, the individuals she

met allegedly denied that they were "Moonies." Like Molko, she indisputably was free to leave but chose to remain. She claims to have first learned the group's identity 22 days after the first contact. Like Molko, she chose to remain with the group and went on to join the Church formally. She also left the Church only after being kidnapped and "deprogramed."

B. The Ruling Of The California Superior Court And Court Of Appeal

Respondents brought an action against the Unification Church in California Superior Court claiming fraud, intentional infliction of emotional distress and restitution.[2] The superior court granted a motion by petitioners for summary judgment—holding that a viable cause of action could not be stated because respondents admitted that they knew the identity of the Church well before they suffered the "damage" of being "induced to join the Unification Church." [3]

Respondents appealed, arguing before the California Court of Appeal that reliance on the initial contacts with the Unification Church was justifiable because in those contacts the Church representatives had gained control of their minds through "coercive persuasion" (also referred to as "thought reform," "mind control," and

---

[2] Respondents also alleged false imprisonment. However, that claim was dismissed below and is no longer part of the case. In ruling that the claim lacked merit, the court of appeals pointed out that "during the period of his alleged imprisonment, Molko commuted daily to a bar review course." Similarly, the courts below found that Leal was "free to depart at any time; she was not physically restrained, subject to threats of physical force or subjectively afraid of physical force."

[3] The court also held that the Church's "conduct was not extreme and outrageous in the sense required to support [a claim for intentional infliction of emotional distress]." With regard to the restitution claim, the superior court ruled: "Molko's own uncontroverted description of the circumstances under which he made the gift [of $6,000] demonstrates that he did so out of a then held religious belief."

"brainwashing")—thereby rendering them incapable of resisting inducements to join the Church.

The court of appeal characterized this argument as an effort "to avoid the seemingly fatal consequences" of the undisputed fact that the respondents were fully aware of the truth regarding the Unification Church shortly after the initial contacts and well before they joined it. Affirming the ruling of the superior court on all counts, the court of appeal held that respondents' theory of "coercive persuasion" must be rejected on constitutional grounds because the theory would ask the jury to find that "healthy adults were induced to join the Church and to change their life style as a result of 'brainwashing' rather than by religious faith . . . ." Pet. App. 99 (citing *Katz* v. *Superior Court*, 73 Cal. App.3d 952, 987-988 (1977)). "[B]ut, it would not be possible . . . to reach th[at] result without questioning the authenticity and the force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." *Id.* at 12 (citing *United States* v. *Ballard*, 322 U.S. 78, 87 (1944)). Thus, "[i]f liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been 'brainwashed' by the religious organization, and courts would become entangled in determining which former adherents acted out of true faith and which were subject to 'mind control.'" *Id.* at 14.

C. The Ruling Of The California Supreme Court

The California Supreme Court reversed on all three counts. The principal ground for reversal was the court's adoption of respondents' "coercive persuasion" theory. In that connection, the court described the issue with regard to the fraud claim as follows:

> The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion.

In resolving this issue, the court concluded that churches can be held liable for "deceiving" nonmembers into subjecting themselves to "coercive persuasion." The court held that a trial is appropriate with regard to "whether Molko and Leal were, by means of coercive persuasion, rendered unable to respond independently upon learning they had been deceived . . . ." In addition, the court allowed respondents to proceed with their claim for intentional infliction of emotional distress on the theory that "fraudulent inducement into an atmosphere of coercive persuasion . . . is extreme and outrageous." Finally, the court noted that Molko's restitution claim "is a rational extension of this fraud theory: he contends, in effect, that one of his damages from the fraud was a $6,000 loss."

REASONS FOR GRANTING THE PETITION

If the ruling of the California Supreme Court were what it purports to be—merely an application of traditional tort law to a church—*amici* would not be submitting this brief. Far from applying "traditional" tort law, however, the ruling below creates a *new* tort of "coercive persuasion" pursuant to which liability can be imposed on a church solely on the basis of a court's subjective determination of the propriety of religious messages. The ruling below does not narrowly proscribe deceit; it subjects proselyting by all churches to regulation and involves the courts in examining the validity of religious conversions.

The core of *amici*'s concern lies in the court's acceptance of certain factual allegations as sufficient to create a triable issue of "fraud."[4] The court's ruling would burden legitimate practices of virtually all proselyting religions. Consider the following examples:

- The court criticized the Church representatives for not identifying themselves as "Moonies" or "mem-

[4] *Amici* discuss only the fraud claim in this brief because it was the focus of the California Supreme Court. But, if the fraud claim is impermissible, the remaining claims must fail as well.

bers of the Unification Church." Apparently, the court would make a Church liable if proselyters do not identify themselves "up front" in a particular way, and if they do not associate themselves with certain nicknames (i.e., "Moonies") or other potentially negative stereotypes and public perceptions. Under this standard, courts would have to determine what labels are appropriate for each religion—a task that strikes at the heart of religious self-definition.

- The court found it significant that the Church representatives did not state "that their purpose in approaching [Molko] and inviting him to dinner was to recruit him into the Church." Apparently, the court would find a church liable any time a member approached a person with proselyting intent and failed to inform the potential convert of the purpose to "recruit" him. Under this standard, a church could be found liable, for example, when a teenager invited a friend to Sunday services without informing the friend of an intent to "recruit" him.

- The court also found significant the fact that during the dinner the potential convert was "held in constant conversation with group members" and was "kept apart from other guests." Apparently, the court would impose a restriction on conversation with non-members at church dinners, coffee houses, firesides and other gatherings.

- The court deemed it significant that Molko "did not know and was not told Boonville was an indoctrination facility for the Unification Church." The court attributed the following characteristics to this "indoctrination facility": a tightly planned daily schedule involving exercise, meals, lectures on brotherly love and social problems, prayer, testimonials, group discussion and group singing. Apparently, the court would require the label "indoctrination facility" to be posted in front of all religious "retreat" facilities having these characteristics—which are common to many, if not most of them.

At bottom, the ruling is nothing more than a judicial attempt to determine what is an acceptable religious experience. But that is precisely what the Founder's protected against in the First Amendment. The ruling has had, and will continue to have, a serious chilling effect on religious proselyting and conversions in California. This burden on speech and the free exercise of religion must be lifted—and lifted now.

A. The Proselyting And Conversion Process Is Central To Most Christian Religions

To understand the serious burden on religion imposed by the ruling below, it is important to understand the proselyting and conversion process. That process begins with initial contacts with a potential convert—sometimes through formal "witnessing," "evangelizing," or "missionary work" and sometimes through less formal contacts of church members with friends, family, business associates and others.[5]

The goal is conversion—which involves a "convert" embracing the beliefs of the religion, making changes in order to live according to those beliefs and ultimately joining the church. While it may come all at once (as in the case of Paul the Apostle—Acts 9), more commonly conversion develops step-by-step as the convert learns more and more about the religion (as in the case of those who were converted by Paul during his years as a proselyter). The proselyter has the task of being sensitive to the ability of the potential convert to comprehend and accept information, and must tailor messages accordingly. As with any significant change, the process of conversion can be emotionally unsettling, even agonizing, to the convert and his or her family. The time involved from initial contacts through conversion may vary

[5] Beginning with the initial contacts and continuing thereafter, the potential convert is educated in the beliefs of the religion. This education may include lectures, group discussions, and reading of religious "texts." Education may occur in virtually any public or private place.

greatly: conversion may occur almost immediately or it may take weeks, months or even years.

The proselyting and conversion process is central to most Christian religions. It is deeply rooted in Biblical teachings, for example: "And he said to them, 'Go into all the world and preach the gospel to the whole creation'" (Mark 16:15) and "Go ye therefore, and teach all nations, baptizing them. . ." (Matthew 28:20). The scriptures make clear that the purpose of proselyting is conversion: "Let him know that he who converteth the sinner from the error of his way shall save a soul from death, and shall hide a multitude of sins" (James 5:20); in Paul's proselyting he called upon people to "[r]epent . . . and be converted" (Acts 3:19).

Most current-day Christian religions actively seek to "convert" people to their faith. For example:

- Pope Paul VI in *Evangelico Nuntiandi* stated: "We wish to confirm once more that the task of evangelizing all people constitutes the essential mission of the Church . . . . Evangelizing is in fact the grace and vocation proper to the Church, her deepest identity. She exists in order to evangelize . . . ."
- William R. Cannon, a Bishop in the United Methodist Church, stated: "Evangelism, therefore, is not optional. It is mandatory. It is not one among several characteristics of Christianity. It is expressive of the essence of Christian faith. When the church becomes merely a 'holding operation,' it ceases to exist; for its nature is not to preserve itself, but, like its crucified Lord, to give itself away in behalf of others. It serves the world by winning its inhabitants to Jesus Christ." W. Cannon, *Evangelism in a Contemporary Context*, 1 (1974).
- The Church of Jesus Christ of Latter-Day Saints ("Mormons") has an extensive world-wide missionary program and is guided by the following doctrine: "Every member of the Church is a missionary, with the responsibility of teaching the

gospel by word and deed to our Father's other children. This responsibility arises through church membership alone, without the receipt of any special call. Church members are under covenant, made in the waters of baptism, 'to stand as witnesses of God at all times and in all things, and in all places that ye may be in, even until death.' They are subject to the divine pronouncement: 'It becometh every man who hath been warned to warn his neighbor.'" Bruce R. McConkie, *Mormon Doctrine*, 2d ed. (1966) (citations omitted).

- The Jehovah's Witnesses have developed "efficient and far-flung publishing enterprises, missionary training schools, and evangelism programs." S. Ahlstrom, *A Religious History of the American People*, 807 (1972).
- The Quakers at the beginning of their movement were evangelical and extremely dynamic: "All tried to make converts and tried all the time." E. Trueblood, *The People Called Quakers*, 5 (1966).
- A fundamental tenet of the American Mennonites has been an "active evangelism characterized by a keen personal interest in the personal conversion and salvation of one's associates." J. Wenger, *Glimpses of Mennonite History and Doctrine*, 120, 2d ed. (1947).

In sum, the decision of the California Supreme Court to expose the Unification Church to liability for its efforts to convert new members to its religious faith strikes at the core of *amici*'s beliefs and practices as well as those of many other churches.

B. The Court's Regulation Of The Content And Presentation Of Proselyting Messages Seriously Burdens Proselyting And Conversion

The ultimate effect of the California Supreme Court's ruling is to regulate proselyting by all religious—*i.e.*, to specify information that must be provided in advance to potential converts and to delineate acceptable and unac-

ceptable ways of presenting proselyting messages. The factual allegations upon which the court relies show that the court would regulate the initial contacts with a potential convert (requiring that specific information be provided regarding the identity of the church and that the potential convert be informed of the purpose to "recruit" him) and the subsequent education process (regulating practices at religious dinners, coffee houses, firesides, retreats and the like).[6]

Regulation of the content and presentation of proselyting messages seriously undermines the proselyting and conversion process. The essence of proselyting is to get beyond misconceptions fostered by prejudice and rumor and to give the potential convert an opportunity to judge religious beliefs on their own merit. Approaching potential converts on a common, non-threatening ground and overcoming preconceived notions and natural resistance to new or different ideas is essential to successful proselyting. This imperative to tailor the message to the audience has been an important part of proselyting since the beginning of Christianity. For example, the Apostle Paul stated (1 Corinthians 9:19-23):

> For though I am free from all men, I have made myself a slave to all, that I might win the more. To the Jews I became as a Jew, in order to win Jews; to those under the law I became as one under the law—though not being myself under the law—that I might win those under the law. To those outside the law I became as one outside the law—not being without law toward God but under the law of Christ—that I might win those outside the law. To the weak I became weak, that I might win the weak.

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[6] Contrary to the lower court's position, no comfort can be found in the fact that the court stopped short of requiring proselyters to obtain informed consent prior to initiating religious conversations —*i.e.*, that the court opted not to require proselyters to issue a theological "*Miranda*-warning." The burden imposed by a jury's post-hoc review of the propriety of proselyting messages, and by the church being subjected to substantial damage awards, is equally debilitating.

> *I have become all things to all men, that I might by all means save some.* I do it all for the sake of the gospel, that I may share in its blesesings.

In this regard, the proselyter must be sensitive to the receptiveness and understanding of the potential convert —providing as much or as little information as the neophyte is prepared to comprehend and accept.[7] Because of the importance of proselyters' discretion over the content and presentation of proselyting messages, it is necessary that such discretion be *doubly* protected under the First Amendment. First, religious speech—just like any other speech—is covered by the long-recognized obligation to give broad latitude in favor of freedom of speech and protection against state-sponsored censorship. See *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342 (1974) ("breathing space" is essential to exercise of free speech); *Riley* v. *National Federation of the Blind of North Carolina*, —— U.S. ——, 108 S.Ct. 2667 (1988) ("The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it. . . . "[G]overnment, even with the purest of motives, may not substitute its judgment as to how best to speak for speakers and listeners. . . .")

Second, religious speech is also covered under the First Amendment's protection of the free exercise of religion. As this Court has long recognized, the "right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar religious functions." *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978) (plurality opinion). The "spreading of one's religious beliefs or preaching the gospel through distribution of religious literature and through personal visitation is an

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[7] The Apostle Paul acknowledged the importance of providing religious information according to the abilities of the potential convert (1 Corinthians 3:1-3):

> "But I, brethren, could not address you as spiritual men, but as men of the flesh, as babes in Christ. I fed you with milk, not solid food; for you were not ready for it; and even yet you are not ready, for you are still of the flesh."

age-old type of evangelism with as high a claim to constitutional protections as more orthodox types." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 110 (1944); see *Fowler* v. *Rhode Island*, 345 U.S. 67, 69-70 (1953).

These First Amendment protections ensure that proselyters can present religious information in the manner they see fit. The California Supreme Court's attempt to restrict proselyters' discretion over the content and presentation of religious messages seriously undermines their ability to perform the proselyting function and encroaches upon these First Amendment protections.

C. Examination Of Whether Religious Speech Is Unduly "Coercive" Subjects Religious Conversion To Judicial Review—Which Is Prohibited By The First Amendment

It is beyond dispute that the First Amendment prohibits judicial review of the validity of religious beliefs and conversions. This principle was clearly stated by this Court in *United States* v. *Ballard*, 322 U.S. 78, 87 (1944):

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. . . .

See also *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

The ruling below contravenes this prohibition. The examination of whether religious speech is unduly "coercive" requires courts to examine the validity of religious conversion. Pursuant to the ruling below, tort liability attaches if religious conversion was a result of proselyting that can be labeled "coercive" even though in only a non-physical sense. Thus, the intellectual and emotional experience of conversion is called directly into question. Further, the examination of the legitimacy of the experience of conversion necessarily involves evaluat-

ing the validity of the accompanying religious beliefs. In his concurring and dissenting opinion below, Justice Anderson aptly summarized this point as follows[8]:

> [A] religious conversion is not subject to judicial scrutiny regardless of the methods used because such scrutiny necessarily entails the questioning of religious faith—scrutiny that is absolutely forbidden by the First Amendment.

Pet. App. 47. The majority below contends, however, that it can regulate proselyting without examining conversion. That position shows a fundamental misunderstanding of the proselyting and conversion process. As discussed above (see pp. 6-11, *supra*), proselyting and conversion are inextricably intertwined. Regulation of proselyting necessarily involves scrutiny of the validity of religious conversion. Moreover, regulation through tort litigation of proselyting chills *both* proselyting and conversion.

D. No State Interests Justify The Burdens Imposed On The Proselyting And Conversion Process

The court below acknowledges that the First Amendment applies to proselyting and conversion. Further, it admits that its ruling burdens religious speech, although the court seriously underestimates the impact of tort law in this context. Nevertheless, the court below ultimately holds that the burdens it imposes are justified by state interests in preventing "fraudulent conduct" that exposes people to "coercive persuasion."[9] By finding a "com-

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[8] In *Katz* v. *Superior Court*, 73 Cal.App.3d 952 (1972), the court used this same analysis to reject the "coercive persuasion" theory—stating in part:

> Evidence was introduced of the actions of the proposed conservatees in changing their lifestyle. When the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith?

[9] The court also claims that these burdens are justified by an interest in "protecting families from suffering" from the "stress"

pelling state interest" in prohibiting non-physical and non-threatening religious proselyting activities, the California Supreme Court has opened the door to extraordinary regulation by the state of church activities.

Court-imposed burdens on religious speech must comport with First Amendment guarantees. *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982); *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Hustler Magazine* v. *Falwell*, —— U.S. ——, 108 S.Ct. 876 (1988). Thus, "[o]nly the greatest abuses, endangering paramount interests, give occasion of permissible limitation" of free exercise rights. *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963); see *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the exercise of religion").

What makes the state court's decision pernicious is that it has defined the state's interest as overlapping the Church's religious mission. Thus, a central part of the Church's mission is to change the beliefs and attitudes of the potential convert, but the court has held that the state has an interest in preventing the kind of change in beliefs caused in this case. Protecting a person from "brainwashing" is merely a derogatory way of saying a person must be protected from embracing new and life-changing beliefs. The court thus arrogates to itself the authority, on behalf of the State, to determine which conversions constitute a "great abuse" and therefore can be freely regulated, even to the point of destruction of a church through protracted litigation and ruinous

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which occurs when a family member joins a "cult" as a result of fraud and deception. While family relationships should be strengthened and nurtured where possible, religious conversions have been known to strain those relationships ever since Christ first declared: "He who loves father or mother more than me is not worthy of me; and he who loves son or daughter more than me is not worthy of me" (Matthew 10:34-38). Thus, finding a compelling interest in stable family relationships would arguably provide a basis for prohibiting the practices of most religions.

damage awards. It is not surprising that a new religious movement with unorthodox views should be the first church to have its practices restricted in accordance with this supposed "state interest." But once this interest is recognized as legitimate, or worse, compelling, all religions are at risk of having their proselyting efforts restrained by the state's ostensible interest in having a citizenry comprised solely of "un-coerced," secular thinkers. It is also equally clear that this result is fundamentally inconsistent with the First Amendment.

The heavy burdens imposed on proselyting and conversion by the California Supreme Court cannot be justified by any "compelling state interest" and, in any event, the court's approach is not the "least restrictive means" to achieve the state's goal. *Thomas* v. *Review Board*, 450 U.S. 707, 717-718 (1981). The state interest in protecting adults from voluntarily listening to non-violent, non-threatening—although persuasive—religious speech is not compelling. The core issue is *whether adults should be given a cause of action for listening to and being persuaded by speech.* Absent force or threats of force, adults must be responsible for what they listen to, and for their reactions to what they hear. The state cannot protect them by regulating the speaker. Otherwise, proselyting is at an end, as well as many other kinds of persuasive speech. No church should risk damage awards for being too persuasive in its religious speech.

The California Supreme Court's decision turned on its acceptance of the theory that there is such a thing as "coercive persuasion"—a conclusion without basis in empirical fact and lacking acceptance in the phychological profession. It is a theory that casts doubt upon one of the basic assumptions of Western jurisprudence—that competent adults are responsible for their decisions and actions. Petitioners and all other evangelistic religions should not be put in even temporary jeopardy on the basis of such a radical and unproven hypothesis.

Even assuming *arguendo* an interest in protecting against fraud and coercion, the court's approach neither sufficiently identifies the offensive behavior nor limits the remedy to that behavior. Because the court's approach is not tailored to this narrow purpose, it must be reversed as unduly encroaching on First Amendment protections.

The court below found that "coercive" speech can excuse respondents from the consequences of their otherwise voluntary acts. In that regard, it considered two types of evidence: (1) statements by the respondents to the effect they were "brainwashed"; and (ii) declarations of a psychologist, Dr. Margaret Singer, and a psychiatrist, Dr. Samuel Benson, to the effect that religious speech can be "coercive," that "coercive" religious speech can be distinguished from legitimate religious speech, and that coerced conversions can be distinguished from legitimate conversions.

The court below seems to conclude that subjective statements by respondents to the effect they were "brainwashed" are sufficient in and of themselves to state a claim for "coercive persuasion" and to survive summary judgment. If that is the case, the court has given disaffected members a powerful tool for harassing churches. The ruling is an open invitation for abuse. Any disaffected member of any church could claim "coercive persuasion" and seek restitution of contributions. Such suits could become a significant burden on churches—because many members who become disaffected rationalize the experience by blaming someone associated with the church for their conversion and explaining their "error" by claiming "I was duped."

Further, to whatever degree the court below relies on the Singer and Benson declarations, that reliance is seriously misplaced. *Amici* strongly reject Singer's and Benson's analysis. These two academics present a pseudoscientific framework which they claim distinguishes be-

tween an authentic conversion and an "emotional breakdown." [10]

This framework simply is an attempt to do something that historically has proved fruitless: to explain religious practices in scientific terms. In this instance, the effort is particularly insidious because the vagueness and overinclusiveness of the factors could be used to indict the practices of virtually all religions. For example, "control over the social and/or physical environment" could be argued to apply to monasteries and convents, parochial schools, religious retreats, and even 19th Century frontier "camp meetings." To one degree or another, virtually all modern Christian churches can be—in fact, have been—argued to have some or all of the Singer characteristics. The use of this type of analysis subjects to judicial review legitimate proselyting and conversion in all churches. Moreover, the overinclusiveness of the Singer factors reaches beyond the religious context. Those factors can be used as readily to condemn experiences from, for example, law school, medical school, or boot camp.

In sum, Dr. Singer's theory of coercive persuasion, or "brainwashing," must suppose a contrasting circumstance of *authentic* or "valid" conversion, where the alleged evils she identifies are not present. But, the law does not know a "valid" conversion from an "invalid" one any more than it knows a "valid" religion from an "invalid"

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[10] Their framework is summarized in Dr. Singer's "six steps of coercive persuasion": (i) control over the social and/or physical environment; (ii) creation of a sense of powerlessness in the person by stripping away their contact with family; (iii) manipulation by the management level of the organization through a series of rewards, punishments and experiences to inhibit the social behavior of the person; (iv) organizing and manipulation by a series of rewards, punishments and experiences to elicit the behavior the management wants; (v) a closed system of logic where no criticism can be made of the organization; and (vi) the existence of a special uninformed state.

one.[11] The First Amendment simply does not permit a court to re-characterize religious conversion as "mind control" or to entertain a suit against a religion for holding or promulgating "false" or even "unhealthy" beliefs. Because the court below failed to heed this fundamental constitutional truth, its judgment should be reviewed by this Court.

CONCLUSION

The burdens the ruling below impose on proselyting and conversion in California are serious and immediate. Further, the chilling effects of the ruling extend beyond California because proselyting and conversion practices are not readily limited by state boundaries. Proselyting is not the type of activity that can survive with different rules of law being applied to it in different states. For these reasons, the petition should be granted.

Respectfully submitted,

EARL W. TRENT, JR.
House Counsel
National Ministries
American Baptist Churches
in the U.S.A.
Route 363 and First Avenue
Valley Forge, PA 19482
(215) 768-2487
Counsel for Amici Curiae

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[11] To accept Dr. Singer's standards for a valid conversion and impose liability upon churches which do not meet that test would violate the Establishment Clause by judicially preferring one religion over another. *Grand Rapids School District* v. *Ball*, 473 U.S. 373 (1985).

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No. 88-1600

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,
v.
DAVID MOLKO and TRACY LEAL,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of California

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF SOCIETY FOR THE SCIENTIFIC STUDY OF RELIGION, AMERICAN SOCIOLOGICAL ASSOCIATION, MARTIN E. MARTY, WILLIAM D'ANTONIO, ROBERT S. ELLWOOD, JEFFREY K. HADDEN, FRANKLIN LITTELL, LARRY D. SHINN, BRYAN WILSON, HENDRICKA VANDE KEMP,

[Additional Amici Listed on Inside Cover]

BRUCE J. ENNIS *
DONALD B. VERRILLI, JR.
JENNER & BLOCK
21 Dupont Circle, N.W.
Washington, D.C. 20036
(202) 223-4100
Counsel for Amici

* Counsel of Record

May 1, 1989

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

RICHARD GORSUCH, RALPH HOOD, BERNARD SPILKA, RICHARD KAHOE, NEWTON MALONY, MARY JO MEADOW, JAMES BECKFORD, EILEEN BARKER, DAVID BROMLEY, MARY ROSE EBAUGH, DEAN HOGE, NANCY NASON-CLARK, ROBERT WUTHNOW, WILLIAM R. GARRETT, BENTON JOHNSON, JAMES RICHARDSON, WADE CLARK ROOF, RODNEY STARK, JOSEPH FICHTER, ARTHUR L. GRIEL, EDWARD LEHMAN, JR., RICHARD S. MACHALEK, ARMAND L. MAUSS, ARTHUR PARSONS, THOMAS ROBBINS, ANSON D. SHUPE, DAVID A. SNOW, STUART WRIGHT, JOSEPH BETTIS, DURWOOD FOSTER, PHILLIP E. HAMMOND, RAY HART, LOYDE HARTLEY, JAMES R. LEWIS, J. GORDON MELTON, DONALD E. MILLER, TIMOTHY MILLER, HUSTON SMITH, LOWELL D. STREIKER, DICK ANTHONY, HUBERT G. LOCKE, JOHN YOUNG

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On Petition for Writ of Certiorari to the Supreme Court of California

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Society for the Scientific Study of Religion, The American Sociological Association and the individuals listed in note 2 *infra*, respectfully move for leave to file the attached brief *amicus curiae*. Petitioner has consented to the filing; respondents have not.

In this case, the California Supreme Court held that tort liability could constitutionally be imposed on the Unification Church for "brainwashing" two potential recruits "by subjecting them, without their knowledge or consent, to an intense program of coercive persuasion." Appendix to Petition for Certiorari ("Appendix") 13a). The Court acknowledged that this tort would infringe the free exercise of petitioner's religion, but concluded that the prevention of "brainwashing" constituted a compelling state interest sufficient to justify the infringement. The court reached this result notwithstanding its recog-

nition that the words and acts purportedly constituting the "brainwashing"—singing hymns, studying scripture, praying together—were sincere religious practices that occurred in a context devoid of fear, confinement or threats of violence. Thus, the crucial issue in this case is whether the State has a compelling interest in prohibiting nonviolent "brainwashing" by religious organizations.

Amici are groups [1] and individuals [2] professionally committed to the dispassionate application of scientific meth-

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[1] The Society for the Scientific Study of Religion ("SSSR") is an association dedicated to research and scholarly publications related to religious phenomena, including the consequences of religious belief on individual behavior, the impact of religious organizations on other social institutions, and the problems of continuity and change within religious groups. The Society now numbers 1,700 members from the following disciplines: anthropology, sociology, psychology, religious studies, theology, history and natural sciences, psychiatry, medicine, philosophy and ethics.

The American Sociological Association, founded in 1905, is an organization of persons interested in the research, teaching and application of sociology. It seeks to stimulate and improve research, instruction, and discussion and to encourage cooperative relations among persons engaged in the scientific study of society. It has 12,500 members in the United States and throughout the world.

[2] *Martin E. Marty* is a Professor at the Divinity School at the University of Chicago and the immediate past president of the American Academy of Religion. *William D'Antonio* is Executive Officer of The American Sociological Association, a professor emeritus of sociology at the University of Connecticut, and a past president of SSSR. *Robert S. Ellwood* is Director of the School of Religion of the University of Southern California. *Jeffrey K. Hadden* is a professor of sociology at the University of Virginia, a past president of ASR, and a past president of SSSR. *Franklin Littell* is a professor of religion emeritus at Temple University. *Larry D. Shinn* is a professor of religion and Dean of the College of Arts and Sciences at Bucknell University. *Bryan Wilson* is a reader in sociology at All Souls College, University of Oxford, England.

The following psychologists are members of the executive council of Division 36 of the American Psychological Association, Psy-

ods in the study of religion and other important social phenomena. Their collective accomplishments rank them

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chologists Interested In Religious Issues ("APA Division 36"): *Hendricka Vande Kemp*, President of APA Divison 36, and a professor at the Fuller Graduate School of Psychology, Fuller Theological Seminary; *Richard Gorsuch*, a professor at the Graduate School of Psychology, Fuller Theological Seminary; *Ralph Hood*, professor of psychology at the University of Tennessee; and *Bernard Spilka*, a professor of psychology at the University of Denver. In addition, *Richard Kahoe* is a past president of APA Division 36. *Newton Malony* is Director of Programs in the Integration of Psychology and Theology, Graduate School of Psychology, Fuller Theological Seminary, and a past president of APA Division 36. *Mary Jo Meadow* is a professor of psychology and director of religious studies at Mankato State University, Minnesota, and a past president of APA Division 36.

The following are members of the executive council of the Association for the Sociology of Religion ("ASR"): *James Beckford*, President of ASR and a professor of sociology at Loyola University, Chicago; *Eileen Barker* a professor of sociology and the former Dean of Undergraduate Studies of the London School of Economics; *David Bromley*, a professor of sociology at Virginia Commonwealth University; *Mary Rose Ebaugh*, an associate professor of sociology at the University of Houston; *Dean Hoge*, a professor of sociology at Catholic University of America; *Nancy Nason-Clark*, a professor of sociology at the University of New Brunswick; and *Robert Wuthnow*, a professor of sociology at Princeton University. In addition, *William R. Garrett* is a professor of sociology at St. Michael's College in Vermont, and a past president of ASR. *Benton Johnson* is a professor of sociology at the University of Oregon, and a past president of ASR. *James Richardson* is a professor of sociology and judicial studies at the University of Nevada, Reno, and a past president of ASR. *Wade Clark Roof*, is a professor of sociology at the University of Massachusetts, Amherst, and a former Executive Secretary of SSSR. *Rodney Stark* is a professor of sociology and comparative religion at the University of Washington, and a past president of ASR.

Joseph Fichter is a professor of sociology at Loyola University, New Orleans, and a Roman Catholic Priest, *Arthur L. Griel* is an associate professor of sociology at Alfred University. *Edward Lehman, Jr.* is a professor of sociology at the State University of New York, Brockport. *Richard S. Machalek* is a professor of sociology and department chair at the University of Wyoming.

as authoritative and distinguished experts on the integrity of social science generally, and on new religious movements in particular. In their consensus view, the allegation of "brainwashing" on which the California Supreme Court's theory of liability depended has no scientific validity. *No* methodologically sound studies support the theory, and many refute it. The purported risk

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Armand L. Mauss is a professor of sociology at Washington State University and editor of the Journal of the SSSR. *Arthur Parsons* is chairman of Department of Sociology and Anthropology at Smith College. *Thomas Robbins* is a member of the council of SSSR. *Anson D. Shupe* is chair of the department of sociology and anthropology at Indiana University—Purdue University. *David A. Snow* is a professor of sociology at the University of Arizona and Vice-President of the Society for the Study of Symbolic Interaction. *Stuart Wright* is a professor of sociology at Lamar University.

Joseph Bettis is a professor of religious studies at Western Washington University. *Durwood Foster* is a professor of Christian Theology at the Pacific School of Religion, Berkeley. *Phillip E. Hammond* is chairman of the religious studies department at the University of California, Santa Barbara, and a past president of SSSR. *Ray Hart* is Chairman of the Department of Religious Studies at the University of Montana. *Loyde Hartley* is a professor of religion and society at Lancaster Theological Seminary, and a former Dean of the Seminary. *James R. Lewis* is a teaching fellow at the University of North Carolina. *J. Gordon Melton* is Director of the Institute for the Study of American Religion, Santa Barbara. *Donald E. Miller* is a professor of religion at the University of Southern California, and is a former Director of the School of Religion. *Timothy Miller* is a professor of religious studies at the University of Kansas, and Chair of the New Religious Movements Group of the American Academy of Religion. *Huston Smith* is a professor of religion and adjunct professor of philosophy emeritus at Syracuse University. *Lowell D. Streiker* is a theologian, author and Chair of the United Church of Christ Spiritual Development Network.

Dick Anthony is a psychologist specializing in religion and mental health effects of new religious movements. *Hubert G. Locke* is a professor in the graduate school of government at the University of Washington, and Director of the William O. Douglas Institute. *John Young* is a psychiatrist at the Whitney Forensic Institute in Middletown, Connecticut, and a Roman Catholic Priest.

of "brainwashing" thus cannot justify the devastating infringement of petitioner's religious practices threatened by the decision below.

As scientists, scholars, and professional associations, *amici* firmly believe that the results of careful scientific research can assist courts faced with issues at the frontiers of human knowledge. *Amici* seek to participate in this case, however, because they also acknowledge a concomitant responsibility to be vigilant against the risk that legal decisions will be based on unfounded assumptions and allegations masquerading as science. Because that appears to be what happened in this case, *amici* wish to demonstrate the implausibility of the purportedly "scientific" claims at issue.[3]

For all the foregoing reasons, *amici* urge the Court to accept and file the attached brief *amicus curiae*.

Respectfully submitted,

BRUCE J. ENNIS *
DONALD B. VERRILLI, JR.
JENNER & BLOCK
21 Dupont Circle, N.W.
Washington, D.C. 20036
(202) 223-4400
Counsel for Amici

* Counsel of Record

May 1, 1989

[3] The decision below was not an aberration. Some courts have properly rejected claims of "coercive persuasion," but others have not. *See, e.g., Peterson v. Sorlein*, 299 N.W.2d 123 (Minn. 1981); *Van Schaick v. Church of Scientology of California*, 535 F. Supp. 1125 (D. Mass. 1982). Other courts have declined to permit brainwashing to be used as a defense to charges based on "deprogramming." *E.g. Eilers v. Coy*, 582 F. Supp. 1093 (D. Minn. 1984). And still others have expressed some skepticism about the scientific basis for claims of brainwashing or coercive persuasion. *Cf. Kropinski v. World Plan Executive Council*, 853 F.2d 948, 956-957 (D.C. Cir. 1988).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1600

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,

v.

DAVID MOLKO and TRACY LEAL,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of California

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BRIEF AMICUS CURIAE

INTEREST OF AMICI

The interest of *amici* is described in the accompanying Motion for Leave to File Brief *Amicus Curiae*.

INTRODUCTION

This case squarely presents an important, unresolved question involving the scope of the First Amendment guarantee of the free exercise of religion: whether a

state may impose tort liability for the sincere, nonviolent conversion practices of a *bona fide* religion.[1]

The California Supreme Court repeatedly suggested that the gravamen of the present case was *fraud*: Unification Church members allegedly recruited Molko and Leal with tactics that concealed both the intent to recruit and the nature of the Church.[2] But the undisputed facts show, as the court below acknowledged, that both Molko and Leal knew the identity and nature of the Unification Church prior to choosing to affiliate. (Appendix 13a). And they were at no time subjected to threats of force or conditions of confinement. *Id.*[3] Accordingly, unless their decisions to affiliate were the result of externally imposed "coercive persuasion," Molko and Leal could not prove fraud in this case. This is because, as found by the two lower courts, they could not show either justifiable reliance on, or harm proximately caused by, the alleged initial misrepresentations.[4]

"Coercive persuasion" supplied the missing link in the court's chain of causation.[5] Because Molko and Leal were allegedly misled into participating in a process "by which they were stripped of their independent judgment," (Ap-

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[1] The *bona fides* of the Unification Church are not at issue in this litigation. Nor are they reasonably open to challenge.

[2] Were this a typical religious fraud case, in which a State sought to regulate a deceptive financial scheme masquerading as religious practice, *see e.g., United States v. Snowden*, 770 F.2d 393, 398 (4th Cir. 1985) (Ervin, J. concurring); *Cohen v. United States*, 297 F.2d 760 (9th Cir. 1962), *amici* would not be filing this brief.

[3] *Cf. United States v. Kozminski*, 108 S. Ct. 2751 (1988) (no federal cause of action for involuntary servitude absent threat of physical force or restraint, or abuse of legal process).

[4] Molko and Leal do not claim any damages from their exposure to the Unification Church conversion practices during the brief period prior to the time they were informed of the nature and purposes of the Church.

[5] The court used the terms "brainwashing" and "coercive persuasion" interchangeably. (Appendix 13a n.11).

pendix 13a n.12), their ultimate decisions to affiliate with the Church were, in the court's view, not freely made. All alleged harms were thus viewed as flowing proximately from the alleged initial deceptions that drew them into the "brainwashing" milieu. Without "coercive persuasion," no actionable harm could have resulted on the instant facts, even if respondents were initially and temporarily misled about the nature and purposes of the Church.[6] They were fully informed well before they decided to join.

What the California Supreme Court pejoratively labelled "coercive persuasion" is nothing less than the complex of ritual and practice comprising the conversion experience of the Unification Church members—witnessing, the coming together for prayer and theological investigation, silent meditation, lectures on scripture, song, and other devotions to God. Purporting to cloak its assumptions in the neutral abstractions of science, the court described this core religious activity as "creation of a controlled environment that heightens the susceptibility of the subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure and a clear assertion of authority and dominion." (Appendix 14a (quoting *Peterson v. Sorlein*, 229 N.W.2d 123, 126 (Minn. 1981))). The court was willing to assume that these "techniques" could have the pernicious effect of "induc[ing] a subject's unyielding compliance," even absent any use or threat of force, or confinement. *Id.* On the basis of that assumption, the court held that imposition of tort liability for these practices was necessary to advance the compelling state in-

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[6] As the dissent observed, "the gist of appellants' fraud complaint was that the conversion was achieved by actionable 'brainwashing.'" (Appendix 46a (Anderson, J., dissenting in part)). At one point the court explicitly acknowledged that "coercive persuasion" was the gravamen of the cause of action brought by Molko and Leal. *See* Appendix 14a.

terest of preventing "brainwashing." (Appendix 17a-28a).

This ruling directly implicates the Free Exercise Clause of the First Amendment,[7] which protects not only the right to hold religious beliefs but also "the right to preach, proselyte, and perform other similar religious functions" that propagate, sustain, and deepen belief. *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (Burger, C.J.) (plurality opinion). *See also Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). Under no circumstances may a State directly infringe religious practices without, at a minimum, *proving* that the purported threat posed by the practices is real and substantial.[8] The professional consensus of *amici* is that the allegation of "coercive persuasion" at issue in this case has no scientific validity and has not been accepted by the relevant professional and scientific communities. It thus provides no basis for subjecting religious organizations to tort liability for conversion practices.

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[7] *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (Free Exercise guarantee applicable to the States through the Fourteenth Amendment).

[8] It is unlikely that the State could ever regulate sincere, nonviolent religious practices to protect interests in emotional well-being. In circumstances analogous to those of the present case, the Ninth Circuit refused to permit imposition of tort liability upon the Jehovah's Witnesses for their doctrinal practice of "shunning" former members. The court held that protection from "intangible" emotional and psychological harms, though important, was ultimately not a sufficiently compelling government objective to permit the prohibition of "shunning" as a religious practice. *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875, 883 (9th Cir.), *cert. denied*, 108 S. Ct. 289 (1987).

Other courts have held that the conversion practices of a religious group—so long as they do not involve violence or physical confinement—are simply not subject to regulation because regulation inevitably results in a deep intrusion on, and unavoidable evaluation of, the legitimacy of religious belief. *See, e.g., Lewis v. Holy Spirit Association*, 589 F. Supp. 10 (D. Mass. 1983); *Katz v. Superior Court*, 73 Cal.App.3d 952 (1977).

REASONS FOR GRANTING THE WRIT

Amici submit that review of the decision of the California Supreme Court is warranted because (1) the court's willingness to credit an allegation of "coercive persuasion" or "brainwashing" conflicts with applicable decisions of this Court demanding searching examination of "compelling state interests" proffered to justify infringements on the exercise of religion, *see Wisconsin v. Yoder*, 406 U.S. at 220; and (2) the California Supreme Court endorsed a scientifically implausible claim of state interest that gravely threatens core religious values.

I. THE DECISION BELOW CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT REQUIRING STRICT SCRUTINY OF PURPORTED "COMPELLING STATE INTERESTS" PROFFERED AS JUSTIFICATIONS FOR REGULATING CORE RELIGIOUS PRACTICES.

When a State infringes core religious practices of the type at issue in this case, a reviewing court "must searchingly examine the interests the State seeks to promote." *Wisconsin v. Yoder*, 406 U.S. at 220. The State may not rely on bald assertions of hypothetical need for infringement, but must justify its claims with "*proof*." *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 107 S. Ct. 1046, 1049 (1986) (emphasis added).[9] A State's asserted compelling interest cannot be credited if it is "highly speculative," unsupported by "specific evidence," or rests "primarily on . . . mistaken assumptions." *Yoder*, 406 U.S. at 222, 224.

The California Supreme Court simply ignored these unmistakable directives. The court did not "searchingly

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[9] *See also Goldman v. Weinberger*, 475 U.S. 503, 106 S. Ct. 1310, 1325 (1986) (O'Connor, J., dissenting) ("government must show that the opposing interest it asserts is of special importance . . . [and] that the interest asserted will *in fact* be substantially harmed" (emphasis added)).

examine" the validity of the compelling reasons offered for infringing petitioner's religious practices. Instead, by deciding that the possibility of "coercive persuasion" was a question of fact to be left to the jury, the court effectively abdicated its constitutional responsibilities.

Even if the court were correct—and it is not—that a genuine dispute existed in the relevant professional communities over the validity of "coercive persuasion," the court erred grievously in leaving this question to the jury. The issue was properly raised on summary judgment challenging the constitutionality of imposing tort liability for religious practices. It was incumbent upon the court to decide whether a compelling state interest supported the effort to impose tort liability. This dispute does not turn on the particular adjudicative facts of the present case, but on the social or legislative "fact" of the scientific validity *vel non* of the allegation of "coercive persuasion." [10]

Courts routinely make judgments of this type as an evidentiary matter in deciding whether expert scientific testimony has gained sufficient professional acceptance to warrant its submission to the jury as a basis for inference. *See Frye v. United States*, 293 F.2d 1013, 1014 (D.C. Cir. 1923). Such a judgment is crucial to resolving the core constitutional issue in this case, and should have been made at summary judgment. *Cf.* Monahan, *First Amendment Due Process*, 83 Harv. L. Rev. 518, 529 (1970) ("The jury cannot be expected to be sufficiently

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[10] Neither California's legislature nor its executive has enacted any laws or sought any enforcement action to vindicate the purported interest; the state interest posited below was derived solely from the common law. Accordingly, the Court had no legislative or executive findings on which to rely in finding this interest compelling. In the absence of such findings, the need for careful judicial scrutiny of the purported compelling interest is particularly acute.

As Justice O'Connor's opinion in *Kozminski* makes clear, the federal law of involuntary servitude requires a showing of force, threats or confinement. 108 S. Ct. at 2759.

sensitive to First Amendment interests involved. . . . First Amendment considerations should be read to confine, not expand the jury's role"). The California Supreme Court thus had both the competence to consult relevant social authority to resolve the issue, and the duty to do so. *See generally* Monahan & Walker, Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law, 134 U. Pa. L. Rev. 477 (1986).[11]

II. THE SCIENTIFIC EVIDENCE PURPORTEDLY JUSTIFYING THE REGULATION OF RELIGIOUS PRACTICE IMPOSED BY THE COURT BELOW CANNOT SURVIVE SEARCHING SCRUTINY.

A strong consensus of relevant professional opinion decisively rejects the validity of the allegation of "coercive persuasion" as applied in this case. *First*, the underlying principles and scholarship from which the "coercive persuasion" allegation purports to be drawn do not even remotely support application of the theory here. *Second*, the claim that Molko and Leal were somehow deprived of their free will has no empirical support, and has been consistently refuted when subjected to scientific scrutiny. This unsupported allegation cannot "prove" that a compelling state interest is threatened by the Church's practices. *Third*, to the extent there has been any claim of empirical evidence in support of the allegation of "coercive persuasion" in the present context, that "evidence" is so riddled with methodological flaws as to be utterly unreliable.

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[11] Furthermore, the California Supreme Court's approach creates a significant risk that inexpert lay jurors will defer uncritically to testimony cloaked in a mantle of scientific expertise. That risk is particularly acute in this case. Prevailing hostility toward the Unification Church, and repeated allegations in the media of brainwashing, will in all probability incline lay jurors to accept the purportedly scientific claims of "coercive persuasion" that confirm prevailing hostile views.

A. As Applied In the Context of this Case, the "Coercive Persuasion" Hypothesis Is Wholly Divorced from its Purported Theoretical Basis.

The description of "systematic manipulation of social influences" as "coercive persuasion"—offered by Respondents' experts, Drs. Singer and Benson—purports to be based on studies of American prisoners during the Korean War. Seeking to explain why some POWs appeared to adopt the belief system of their captors, the popular press advanced the theory that the free will and judgment of these individuals had been overborne by sophisticated techniques of mind control or "brainwashing."[12] Several reputable scientists concluded that—under conditions of confinement involving extreme physical hardship, isolation for extended periods, deprivation of necessities, physical torture and threats of death—some individuals might be temporarily induced to accept belief systems antithetical to those they previously held. *See* James, *Brainwashing: The Myth and the Actuality*, 61 Thought 241 (1986).

The California Supreme Court cited this literature to show that "coercive persuasion" exists and may have occurred in this case. (Appendix 14a-15a). But the authors of the foundational scholarship—Robert Lifton and Edgar Schein—unequivocally rejected the possibility of "brainwashing" of the type alleged in this case. They reached the far more circumscribed conclusion that a small percentage of POWs were induced to alter beliefs and attitudes when "subjected to unusually intense and prolonged persuasion in a situation from which they could not escape." E. Schein, *Coercive Persuasion* 18 (1961). Under conditions of extreme cruelty, some individuals were found to be willing to adopt temporarily the attitudes and beliefs their captors urged on them, in the hope that by acquiescing they could convince their captors to ameliorate the hardships. Even under such extreme pres-

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[12] *E.g.*, E. Hunter, *Brainwashing in Red China* (1951).

sures, however, conversion to communist ideology was rare. Schein concluded that "considering the effort devoted to it, the Chinese program [of coercive persuasion] was a failure." Schein, *The Chinese Indoctrination Program for Prisoners of War: A Study of Attempted "Brainwashing"* 332, *in* Readings in Social Psychology (Macoby ed. 1958). Furthermore, some of those who experienced temporary conversions were predisposed to the new value system imposed on them. E. Schein, *Coercive Persuasion* at 202.[13]

Most important, a crucial factor distinguishes the conversion practices of new religious movements, and similar groups, from Korean War POW camps: the complete absence of physical confinement, torture, death threats and severe physical deprivation. Physical coercion was found to be essential to the success of any "involuntary" thought reform process. *Id.* at 125-127; R. Lifton, *Thought Reform and the Psychology of Totalism* 13, 65-85 (1961). Lifton and Schein concluded that, except for the physical coercion, the "thought reform" imposed on POWs had much in common with the "influence processes" of myriad mainstream social institutions such as college fraternities, Catholic orders, the armed services, Alcoholics Anonymous and some mainstream Christian denominations. E. Schein, *Coercive Persuasion* at 260-282; R. Lifton, *Thought Reform* at 435-451.[14]

Thus, there is no support for equating the physically brutal "mind control" techniques imposed on Korean War

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[13] *See generally United States v. Fleming*, 7 U.S.C.M.A. 543, 23 C.M.R. 7 (1957), a military prosecution of an Army Major for collaborating with the enemy in which the conditions of confinement and treatment of Korean POWs are described in detail.

[14] For a more comprehensive analysis of the inapplicability of the work of Lifton and Shein to new religious movements, *see* Brief Amicus Curiae of Society for the Scientific Study of Religion, *et al.* in *George v. International Society for Krishna Consciousness of California*, No. D007153 (Cal. Ct. App., 4th District).

POWs with the conversion practices of *bona fide* religious groups such as the Unification Church. As Judge Krupansky stated in his concurring opinion in *United States v. Kozminski*:

> "the brainwashing techniques employed by the Chinese as studied by Dr. Lifton were scientifically implemented, and scientifically monitored around the clock. The techniques were professionally structured into a planned, systematic, progressive program calculated to totally pervert and/or destroy an individual and to change his behavior and his beliefs. Essential to effective metamorphosis of the prisoner was *an environment of physical captivity, a realization of the futility of escape or rescue, and the use of force or the ever-present threat of force and even death.*"

821 F.2d 1186, 1204 (6th Cir. 1987) (emphasis in original), *aff'd*, 108 S. Ct. 2751 (1988).

For this reason, the consensus view of scholars repudiates the effort to extend the POW mind control hypothesis to the context of new religious movements. *E.g.*, James, *Brainwashing*, *supra*, at 254 ("it is absurd to compare this to the fear of death in prisoners held by the Chinese and North Koreans"); E. Barker, *The Making of a Moonie* 134 (1984) (comparison "cannot be taken seriously"); Saliba, *Psychiatry and the New Cults: Part 1*, 7 Academic Psychology Bull. 51 (1985); Anthony & Robbins, *New Religions, Families and "Brainwashing" in* In Gods We Trust 263, 264-265 (T. Robbins & D. Anthony eds. 1981). Because the undisputed facts of this case lack the very element that Lifton and Schein concluded was the *sine qua non* of "coercive persuasion," simple invocation of their works provides no valid support for assuming that new religious movements pose a genuine danger of "brainwashing" potential converts.[15]

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[15] Lifton himself made this clear in a recent publication: "From my perspective, then, cults are not primarily a psychiatric problem, but a social and historical issue. . . . I do not think that pattern is

There is, furthermore, no evidence to suggest that anything can substitute for physical coercion in the process of "coercive persuasion." To the contrary, all available research refutes any such claim.

B. As Applied To New Religious Movements, The Theory of Coercive Persuasion Is Not Scientific.

Scientific inquiry demands "the pursuit of objective knowledge gleaned from observation." J. Neale and R. Liebert, *Science and Behavior: An Introduction to Methods of Research* 9-10 (1980) (Hereafter *Science and Behavior*); J. Monahan and L. Walker, *Social Science in Law* 33-34 (1985) (hereafter *Social Science in Law*). Refutability is a *sine qua non* of scientific validity. Platt, *Strong Inference*, 146 Science 347, 353 (1964). If a claim is not in principle capable of being refuted by empirical means, then it cannot be called a scientific statement. Valid investigatory methods are not confined to pristine &laboratory conditions, but the validity of any causal explanation depends crucially on its empirical foundation and refutability.

From a scientific point of view, it is exceedingly difficult to evaluate allegedly coercive acts by measuring their effect on some ineffable human quality called free will. To do so, a scientist would have to define what free will is, describe how the environment affects it, and decide when the effects become so great that free will can be said to be overborne.[16] Even if such an investigation

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best addressed legally. . . . Not all moral questions are soluble legally or psychiatrically, nor should they be. I think psychiatrists and theologians have in common the need for a certain restraint here, to avoid playing God and to reject the notion that we have anything like a complete solution that comes from our points of view or our particular disciplines." R. Lifton, The Future of Immortality and Other Essays for a Nuclear Age 218-219 (1987).

[16] *See* Balch, *What's Wrong With the Study of New Religions And What We Can Do About It*, in Scientific Research and New Reli-

were possible, *no* such investigation has been undertaken to demonstrate the validity of the allegation of "coercive persuasion" of the kind at issue in this case.

There is, however, an asymmetry to what is methodologically permissible within the scientific enterprise. Whether or not a claim or theory is capable of being demonstrated valid, one can sometimes *refute* a theory because the consequences that follow logically from it can be shown to be untrue. If one looks at only an *individual* who has responded positively to a particular environment, one cannot identify the removal of free will as the reason for the response. If, however, most people were *not* to respond in the way in which a particular environment was attempting to influence them, then one *could* conclude that the argument that the environment had removed their free will is not valid. Evaluated in this way, the allegation of "coercive persuasion" at issue in this case has no plausibility.

A significant and *uncontradicted* body of empirical social science evidence demonstrates that the overwhelming majority of persons who undergo the process described by the court below as "coercive persuasion," even for a period of weeks, choose *not* to affiliate with the new religious movement, or other group, using the purportedly coercive techniques. For example, several studies of Unification Church recruitment workshops reveal that, on the average, fewer than one in ten of those who get as far as attending a Church workshop agree to join the Church, and fewer than one in twenty remain with the Church for two years. *E.g.*, E. Barker, *The Making of a Moonie* at 146 (fewer than ten percent of more than one thousand persons studied in 1979 agreed to join the

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gions 25 (B. Kilbourne, ed. 1985) (as a descriptive label, "brainwashing . . . is essentially useless because it depends on untestable assumptions about the slippery issues of freedom and control") (hereafter *The Study of New Religions*).

Church for more than one week and fewer than four percent remained affiliated for more than two years); Galanter, *Psychological Induction into the Large Group: Findings from a Modern Religious Sect*, 137 Am. J. Psychiatry 1575 (1980) (fewer than nine percent agreed to join for more than one week and fewer than six percent remained affiliated for more than one year).[17]

The only conclusion that can scientifically be drawn from this uncontradicted evidence is that the conversion practices at issue in this case are *not coercive*. These practices not only fail to convert at least 90% of those subjected to them, but actually dissuade the overwhelming proportion. Thus, some other variable—either alone or interacting with the Church's conversion practices—must explain individual decisions to join the Church. E. Barker, *The Making of a Moonie* at 144-45. But even if one could isolate a configuration of human qualities that differentiates those who decide to join the Church from those who decide not to join, such a showing would not justify imposing legal liability. Traits common to such a group might well be those—such as a questioning nature or a desire for community—that predispose persons toward religious experience. For such persons, the decision to join the Church might be quite rational. The ability to persuade them, even with extraordinary skill, is not alone a reason for imposing legal liability. A court should consider attaching legal consequences to persuasive efforts that are not inherently coercive only if something about the common traits of those persuaded calls for special legal protection. No such showing has been made.[18]

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[17] *See also* Bird & Reimer, *Participation Rates in the New Religious Movements*, 22 J. for the Scientific Study of Religion 1, 1-21 (1982); S. Levine, *Radical Departures* (1984) (over 90% of those studied who joined new religious movements departed within two years).

[18] To the contrary, extant evidence demonstrates that the qualities that dispose individuals toward joining the Church are not

C. The Methodological Foundations For The Theory Of Coercive Persuasion Are Nonexistent.

To be of use to courts, scientific analysis not only must rest on an empirical foundation, but also must produce trustworthy conclusions.[19] *See generally*, Monahan & Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. Pa. L. Rev. 477 (1986). Scientific evidence rejecting the "coercive persuasion" allegation is voluminous, well-documented, and published in numerous books and leading, refereed professional journals. *See supra* pages 14, 17 and *infra* pages 22-26. *Amici* are aware of *no* scientific studies supporting the hypothesis that—absent physical force, prolonged confinement or serious deprivation—the "creation" and manipulation "of a controlled environment" can work to deprive an individual of free will. (Appendix 14a). The sole support for this allegation comes from a small contingent of mental health professionals, two of whom—Drs. Singer and Benson—submitted expert affidavits in this case. These affidavits encapsulate the en-

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qualities of vulnerability. Barker, *Making of a Moonie* at 235 ("[i]t is precisely those whom one might have expected to be the most vulnerable to persuasion who turn out to be the nonjoiners"). *Accord* Richardson, *The Active vs. Passive Convert: Paradigm Conflict in Conversion/Recruitment Research*, 24 J. for the Scientific Study of Religion 163 (1985). Other studies refute the suggestion that Church members are in any way impaired in their capacity for rational thought and choice. *E.g.*, Ungerleider & Wellisch, *Coercive Persuasion (Brainwashing), Religious Cults, and Deprogramming*, 136 Am. J. Psychiatry 279, 281 (1979) ("No data emerged from intellectual, personality, or mental status testing [of more than 50 'cult members'] to suggest that any of these subjects are unable or even limited in their ability to make sound judgments and legal distinctions as related to their persons and property").

[19] For practitioners of the scientific method, trustworthiness is described in terms of two components: reliability and validity. A particular methodology is reliable to the extent it generates a consistent series of results. A methodology is valid to the extent it generates accurate measurements of what it purports to measure.

tirety of the "scientific" basis for crediting the coercive persuasion allegation in this case.

The conclusions that Drs. Singer and Benson draw are based on a relatively few interviews with former Church members and their families, including Molko and Leal. Singer Declaration at 2-3, R.752-753; Benson Declaration at 1, R.765. For most of these interviews, no written record exists. Singer Deposition in *Dole v. Holy Spirit Association*, *supra*, at 85. *The collected information has never been compiled systematically, analyzed statistically, or published in a reputable scientific journal.* As a result, any conclusions drawn from the data must be taken on faith. Absent publication of supporting evidence, and persuasive refutation of the substantial body of published findings rejecting the "coercive persuasion" claim, the allegation that these experts advance—and on which the California Supreme Court relied—cannot be considered reliable or valid by the relevant professional communities.[20] *See* Neale & Liebert, *Science and Behavior*, *supra*, at 13-14 ("The scientific approach requires that all claims be exposed to systematic probes"). And to the extent that the allegation can be said to have any empirical foundation at all, that foundation is so methodologically inadequate as to be worthless.

1. *The Sources of Information Purporting To Support the Hypothesis Are Not Impartial.*

The conclusions of Drs. Singer and Benson are based predominantly on information drawn from Unification Church members, most of whom had been forcibly removed from the Church environment. Common sense suggests—and scientific analysis confirms—an inevitable bias in these sources. Individuals who have left a movement under such circumstances might be expected to provide hostile accounts of their experience, and to seek self-

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[20] Nor ought they be the basis upon which the religious practices of a religious organization are placed on trial before a potentially hostile jury. *See supra* note 11 and accompanying text.

serving rationalizations. By learning to explain affiliation as brainwashing, former members can place responsibility for their past actions on the Church rather than on themselves.

A persuasive and uncontradicted body of recent empirical research demonstrates this systemic bias in the data of Singer and Benson. Most of the individuals—including Molko and Leal—interviewed by Drs. Singer and Benson did not depart the Church voluntarily; they were kidnapped or abducted into leaving and were subsequently "deprogrammed" or counseled. Several recent studies show that individuals who have been "deprogrammed" are more hostile, and claim "coercive persuasion" far more often, than do those who leave such organizations of their own volition. Indeed, although most "deprogrammed" individuals claim they were brainwashed, almost no one among the far larger numbers who depart *voluntarily* makes such a claim. *See* Lewis, *Reconstructing the "Cult" Experience*, 46 Sociological Analysis 151 (1986) (survey of 154 former cult members, including 42 former Unification Church members) (hereafter *Reconstructing the Cult Experience*); Wright, *Post-Involvement Attitudes of Voluntary Defectors from Controversial New Religious Movements*, 23 J. for the Scientific Study of Religion 23 (1984) (hereafter *Post-Involvement Attitudes*); Galanter, *Unification Church ("Moonie") Dropouts: Psychological Readjustment After Leaving A Charismatic Religious Group*, 140 Am. J. Psychiatry 984, 986 (1983) (study of 66 former Unification Church members); Solomon, *Integrating the Moonie Experience: A Survey of Ex-Members of the Unification Church*, in In Gods We Trust 275 (1981) (study of 100 former Unification Church Members) (hereafter *Survey of Ex-Members*). *See also* Richardson, van der Lans & Derks, *Leaving and Labelling: Voluntary and Coerced Disaffiliation From Religious Social Movements*, 9 Research in Social Movement, Conflicts and Change 97 (1986).

Given the importance of the brainwashing explanation in the deprogramming process[21] and the extreme frequency with which deprogrammed former members—but not former members who departed *voluntarily*—claim coercive persuasion, it may well be that Drs. Singer and Benson have been observing nothing more than the effects of *deprogramming*, and not the effects of the Church's conversion practices.[22]

2. *There is No Relevant Evidence That Church Membership Causes Any Harm That Would Justify The Imposition Of Tort Liability.*

The conclusion of Drs. Singer and Benson that Church membership causes psychological harm has no validity because the methodology fails to meet basic standards for scientific research; it is sheer speculation.[23] Because they have not shown a higher incidence of the observed maladies among former Church members than among similar population groups, they have no basis even for claiming

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[21] Studies have observed that "presentation of the brainwashing ideology appears to be one of the most essential components of the deprogramming process." Lewis, *Reconstructing the Cult Experience*, at 157; *accord Solomon, Survey of Ex-Members*, at 289. *See also* E. Barker, *Making of a Moonie* at 129.

[22] Drs. Singer and Benson have been criticized on precisely this ground. *E.g.*, Barker, *Making of a Moonie* at 128 ("psychologists . . . who rely so heavily (often exclusively) on such evidence are neglecting some very basic principles of research"); Balch, *The Study of New Religions* at 30-32; Lewis, *Apostates* at 22; Richardson *et al., Leaving and Labelling* at 176 & n.8; Richardson, Methodological Considerations in the Study of New Religions, *in Divergent Perspectives on New Religions* 134 (B. Kilbourne ed. 1985).

[23] Several commentators have criticized Drs. Singer and Benson for this reason. *See, e.g.*, Melton & Moore, *The Cult Experience* at 57; Saliba, *Psychiatry and the New Cults* at 45-56; Kilbourne & Richardson, *Psychotherapy and New Religions* at 246 n.1; Balch, *The Study of New Religions*, at 29; E. Barker, *The Making of A Moonie* at 132.

a correlation between Church membership and psychological harm.

But even if a correlation were shown, such a showing would not justify the inference that Church membership caused the observed harms. "[W]hen a social scientist observes a correlation between two variables . . ., it is often tempting to simply assume that the relationship is causal in nature. . . . This assumption is unsound whenever the observed relationship can reasonably be explained in a different way. Thus, [c]ausal inferences require research designs that can control for plausible rival hypotheses." Neale & Liebert, *Science and Behavior*, *supra*, *quoted in* Monahan & Walker, *Social Science in Law*, *supra*, at 54-55. In this case, there are at least four obvious alternative explanations for any emotional and psychological injuries purportedly found in former Church members: (i) the observed condition might have preceded membership in the Church; (ii) both the observed condition and Church membership might be explained by a third factor; (iii) the observed condition might have been caused by deprogramming; (iv) the observed condition might be the product of readjustment to life after membership in the Church. Because Drs. Singer and Benson have not excluded any of these alternative explanations, they have no basis for concluding that Church membership causes harm.

Not surprisingly, methodologically superior studies do not support the allegation of psychological harm. A significant body of evidence suggests that membership in new religious organizations such as the Unification Church tends to relieve psychological distress. *E.g.*, Deutsch and Miller, *A Clinical Study of Four Unification Church Members*, 140 J. Am. Psychiatry 767, 769 (1983); Galanter, *Charismatic Religious Sects and Psychiatry: an Overview*, 139 Am. J. Psychiatry 1539 (1982). *See also* Melton & Moore, *The Cult Experience*, *supra*, at 42; T. Ungerleider, *The New Religions* 15-16

(1979). *Cf.* Griffith, Young & Smith, *An Analysis of the Therapeutic Elements in a Black Church Service*, 35 Hosp. and Com. Psychiatry 464 (1984) (similar findings); Richardson, Psychological and Psychiatric Studies of New Religions *in Advances in the Psychology of Religion* (Brown, ed. 1985).

D. The Theory of Coercive Persuasion On Which The The Court Below Relied Is Simply A Negative Value Judgment In Scientific Garb.

Amici have demonstrated that the allegation of "coercive persuasion" on which the California Supreme Court relied has no specific legitimacy. It uses the language of science to cloak an attack on religious liberty. At bottom, it is little more than a refusal to accept that persons could freely choose to adopt the belief system and way of life of that Church. *See* Robbins, *"Uncivil" Religions and Religious Deprogramming*, 61 Thought 277, 280 (1986) (mind-control hypotheses "frequently entail sinister clinical interpretations of behaviors and processes which might otherwise be seen merely as indicative of intense religious commitment"). It is, in other words, simply a layperson's negative value judgment about the beliefs and practices of the Unification Church. *See* Anthony and Robbins, *New Religions, Families, and "Brainwashing"*, in In Gods We Trust 263, 266-267 (1981); Balch, *The Study of New Religions*, *supra*, at 25.

Permitting tort liability to be imposed on the basis of the "coercive persuasion" allegation poses a serious risk of prohibiting sincere, nonviolent religious practices because of nothing more than majoritarian antipathy. There is no scientific basis for concluding that *any* government interests—much less a *compelling* interest—would be served by permitting tort liability for sincere, nonviolent conversion practices. Indeed, in all likelihood majoritarian antipathy accounts for the California Su-

preme Court's uncritical acceptance of the purportedly "scientific" claims of brainwashing at issue. *Cf.* S. Gould, *The Mismeasure of Man* (1981). Accordingly, this Court should grant certiorari to eliminate the extreme threat to religious liberty, and to the integrity of scientific research, posed by the decision below.

CONCLUSION

For all the foregoing reasons, and for those set forth in the petition for certiorari, the petition for certiorari should be granted.

Respectfully submitted,

BRUCE J. ENNIS *
DONALD B. VERRILLI, JR.
JENNER & BLOCK
21 Dupont Circle, N.W.
Washington, D.C. 20036
(202) 223-4100
Counsel for Amici

May 1, 1989

* Counsel of Record

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No. 88-1600

In The

Supreme Court of the United States

October Term, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY and NEW EDUCATION DEVELOPMENT SYSTEMS, INC.,

Petitioners,

v.

DAVID MOLKO and TRACY LEAL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

FORD GREENE
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

Counsel for Respondent, David Molko

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the Free Exercise Clause of the First Amendment necessarily confers an absolute immunity upon petitioners absolving them of any legal accountability for the consequences of engaging in a course of fraudulent and coercive conduct whereby petitioners deceived respondent into submitting himself, without his knowledge or consent, to petitioners' implementation of a strategy of coercion and subjugation accomplished by an intense program of brainwashing which caused respondent to lose his ability to make independent decisions by undermining his ability to reason and impairing his capacity to intelligently exercise an informed consent or whether the California Supreme Court fully considered and correctly decided the issues below.

2. Whether the creation of an absolute immunity based upon the Free Exercise Clause of the First Amendment which would protect petitioners from being held legally accountable for the consequences of employing deception and brainwashing as a practice of obtaining and maintaining its membership would violate the Establishment Clause of the First Amendment as an impermissible fostering and promotion of religion.

PARTIES TO THE PROCEEDING

All of the parties are listed in the caption.

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DAVID MOLKO and TRACY LEAL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Respondent, David Molko, hereby presents his opposition to petitioners writ of certiorari to review the judgment of the Supreme Court of the State of California.

OPINIONS BELOW

The opinion of the Supreme Court of the State of California is reported at 46 Cal.3d 1092, 762 P.2d 46, 252 Cal.Rptr. 122 (1988). Respondent adopts the remainder of petitioners' text setting forth the opinions below.

JURISDICTION

Respondent adopts petitioners' jurisdictional statement.

RESPONDENT'S STATEMENT OF THE CASE

The California Supreme Court found that for the purposes of a motion for summary judgment petitioners'[1] "religious organization can be held liable on a traditional cause of action for fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion." App. 24a.[2] Similarly, the court held that the Unification Church could be held liable for the intentional infliction of emotional distress and provide restitution for money obtained through its scheme of control perpetrated by lying and through coercion. App. 29a-33a, 34a-36a.

What is at issue is simple. Can a religion or an organization operating under the legally described structure of a religion be permitted to perpetrate "fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion"? Ap. 24a. Any reasonable or fair person would be inclined

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[1] As to the petitioners herein, Molko uses the "names 'Unification Church' and 'the Church' to refer collectively to the Holy Spirit Association for the Unification of World Christianity and New Development Systems, Inc." App. 2a.

[2] So as not to unnecessarily burden this Court with paper, respondent has chosen not to file an appendix with this brief in opposition. Thus, any reference herein to an appendix is made to the appendix filed by petitioners.

to answer, No. Furthermore, if such an organization is found to be responsible for such a violation of a person's inalienable rights, then should they not be expected to answer in damages and make restitution to that person whose rights had been violated? A reasonable and fair person would be inclined to answer, Yes.

This is precisely what the California Supreme Court has concluded and petitioners seek overturned.

It is not the desire of respondent to infringe upon or destroy the rights of religions within this nation. The decision of the California Supreme Court does not do so. Upholding the California Supreme Court's decision will not do so.

The basic beliefs and tenets of any religion, regardless of the perceived morality of such beliefs, are by law sacrosanct. However, when the practices of such organizations violate the law, then they are punishable under the law. It is simple, just and necessary.

The petitioners have, by their own admission, engaged in deceptive recruiting practices to bring nonmembers into their organization. Such practices are blatantly fraudulent. Fraud is illegal and in itself subjects petitioners to civil accountability for these practices. These fraudulent practices then lead these victims to be unwitting participants in what the California Supreme Court has called "coercive persuasion." This "coercive persuasion" can most clearly be recognized when labeled with its more common term, "brainwashing." Such coercive practices, or brainwashing are illegal and should subject petitioners to civil liability for employing them.

This is precisely what happened to respondent, David Molko.[3] His association was obtained by deceptive recruiting practices which purposefully, specifically, and premeditatedly misrepresented that the recruiting agents had no religious affiliation, which they did, and that their goal, (which is indisputable), was to make David Molko a member of Sun Myung Moon's Unification Church, which it clearly was.

Petitioners deceived, coerced, dominated and exploited David Molko and now, these same petitioners seek to crawl beneath the mantle of religious liberty, to pull the First Amendment over them like a rock for protection. Once again, a religion's beliefs, no matter how heinous or immoral they may seem to a just and moral person, are sacrosanct. When their actions violate the law, then the First Amendment freedom of religious expression is not an absolute shield, nor should it be.

How does the Unification Church seek to avail itself of freedom of religion in an attempt to legitimize its actions of deception and coercion, of fraud and brainwashing? The Church would have this Court apply the term "proselytizing" to describe the process "of activities leading to religious conversion." (Petition, 2.) Thus, if the Church employed deception and lies ("proselytizing") to isolate Mr. Molko so that he could then be the unwitting subject of Chinese Communist brainwashing procedures ("conversion") commonly employed by the Unification

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[3] For the purposes of the herein opposition to the petition for certiorari, the arguments are submitted on behalf of David Molko. Thus, he will be referred to either as "Molko" or "respondent."

Church, then that is simply, in their eyes, to be seen as an acceptable religious practice.[4] This brainwashing, or as the Church would have it, "conversion," to secure allegiance to Korean national Sun Myung Moon, along with the deceptive "proselytizing," according to the Church, should automatically and unquestioningly be protected as a "core religious function." Petition 2.

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[4] That fraud is illegal is indisputable. The Unification Church admits that it fraudulently denied its religious nature and specifically misrepresented its identity to persuade Molko to associate with it. Pet., 5. The purpose of such fraud was to deceive Molko into a setting where he could be "brainwashed." Complaint ¶¶ 41-45. App. 13a.

"Brainwashing is 'fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations." App. 14a quoting *Peterson v. Sorlein* (Minn. 1980) 299 N.W.2d 123, 126, *cert. denied* (1981) 450 U.S. 1031. Such procedures were first employed by the Communist Chinese in the 1950s for political indoctrination. T.E. Chen, *Thought Reform of the Chinese Intellectuals* (1960) Hong Kong University Press [hereinafter "Chen"]; R.J. Lifton, *Thought Reform and the Psychology of Totalism* (1961) W.W. Norton & Co.; E. Schein, *Coercive Persuasion* (1971) W.W. Norton & Co.

In conjunction with the use of the terms "thought reform" and "coercion," Molko adopts "the terms 'coercive persuasion,' 'mind control,' and 'brainwashing' [which will be used] interchangeably to refer to the intense indoctrination procedures discussed herein." App. 13a.

Were such an interpretation to result in the establishment of an immunity sought by the Church, it would constitute an unprecedented and intolerable abuse of religious liberty. Then, the free exercise of religion not only would encompass deception, but also would encompass the procedures formerly used by the Communist Chinese to secure a compliant citizenry. Had Molko known of the Church's true identity at the outset of its solicitation of him, he would have rejected its overtures. This type of coercive persuasion does not include the use of force. It does not include the threat of force.

In fact, "No physical torture was ever used in the thought reform of the intellectuals." *Chen*, 71. See also J.D. Frank, *Persuasion and Healing* (1974) Schoken Books, 90 (hereinafter *Frank*) [The Chinese intellectuals placed at a "revoluntary college" were "not subjected to the physical hardships that tend to obscure the psychological features of the process." The Chinese Communist form of brainwashing "relies less on physical torture than on psychological pressures, especially the manipulation of group forces."] And see Biderman, *Communist Attempts To Elicit False Confessions From Air Force Prisoners Of War* (1957) 33 New York Academy of Science 616, 618 ["[I]nflicting pain is not a necessary or particularly effective method of inducing compliance."]

In the setting surrounding the Chinese intellectuals, there was a complete lack of privacy, an unremitting routine of self-criticism, group discussion, rote learning, constant repetition of Communist viewpoints and the repeated rewriting and rejection of autobiographical essays. The group exploited the feeling of emotional

nakedness and unworthiness that is the result of relentless self-criticism. The group focused upon items obtained from the individual's life history which caused feelings of guilt, conflict and anxiety to arise within him. These feelings were magnified when the group rejected, isolated and reviled him because of his "improper" attitudes and past behavior. He was placed in a situation in which he could not avoid having his past life reviewed and questioned and could not avoid hearing an exposition on the Communist position. The group rewarded and approved the individual when he behaved in accordance with their aims, and in that way indicated to him that the only possible solution to an intolerable situation was to accept the "proper" point of view. Hinkle and Wolfe, *Communist Interrogation and Indoctrination of "Enemies of the State"* (1956) 76 A.M.A. Archives of Neurology and Psychiatry 115, 173-174.

The processes involved can be grouped according to three interrelated aspects – extreme emotional arousal, total milieu control, and the interrogation. The methods, "attempted to produce an intense, disorganizing emotional state in their subjects, to cut them off as completely as possible from all social supports of their previous world view, and to immerse them in a social milieu that consistently and uniformly represented the Communist one." *Frank*, 91.

These are, in fact, the nefarious techniques which the Unification Church used to render Mr. Molko incapable of making a decision of his own free will regarding his affiliation and association with the Church. This is the very essence of the entire case: once again, beginning with deception (fraud or "proselytizing"), leading to

coercive persuasion (brainwashing or "conversion"), the Church deprived Mr. Molko of his constitutional rights of free will, deprived him of his ability to act freely and make decisions that could be considered by any reasonable and fair person to be decisions that were his own. It was in this association and in this state of mind that Mr. Molko was importuned to and did give to the Unification Church money, labor, devotion and obedience. As a result of this scheme of fraud and coercion, the Unification Church was unjustly enriched.

Under this limited set of circumstances, it was the Church, not Molko, which made the decision that he would enter into a religious affiliation from which he could not escape. If an immunity were conferred upon the Church which was to protect it from civil liability for engaging in such conduct, the result would constitute an impermissible fostering of religion. Were the State to protect the Church from having to legally answer for the consequences of lying to citizens, including Molko, the Church could employ brainwashing procedures with impunity. Such would constitute an unconstitutional establishment of religion because the decision whether or not to religiously affiliate would effectively be removed from the sphere of Molko's control. By default, in the matter of the religious affiliations of its citizens, the State would defer to the Church and thus establish the Church's power as superior to its own.

To confer an immunity upon the Unification Church protecting it from being held legally accountable for the consequences of deceptive and coercive conduct would in effect sanction the use of brainwashing procedures on

American citizens without either their knowledge or consent. Even when cloaked in the sacred terminology of the free exercise of religion, our Democracy cannot tolerate such as that urged by the Church.

1. With certain additions to the record here, Molko adopts by reference the statement of facts set forth in the opinion of the Supreme Court of the State of California as though they were fully set forth herein. App. 4a-8a.

During the first 12 days that Molko spent in the indoctrination camps, the regimentation of the program caused him to feel inner conflict. Molko Dep. 127. In the camps' environment there was no information available that was critical of or which even made reference to the Unification Church. There was a conspicuous absence of radio, television or printed material such as newspapers. Molko Dep. II 10, 117. The same two people were constantly with him wherever he went in order to keep him apart from and prevent communication with others who also were new to the group situation. Molko Dep. 130, Molko Dep. II. 17, 61-62, 68. Not only did the same two individuals constantly monitor Molko, they also guided him into participation in small group discussions, which were always led by the same person within the same group after each of the indoctrination lectures. Molko Dep. 130-142. During the course of the small-group meetings Church members urged Molko to "open up." In response, he revealed his hopes of becoming a better person, his doubts of himself and of his career, problems he experienced in his family and in law school, and problems and difficulties he experienced when trying to relate to other people. Molko Dep. 148-153. During the lectures, points were repeatedly made in an emotional

manner about the destruction of the nuclear family, the breakdown in communication among people and chaos in the order among the nations of the world. Molko Dep. 179. Molko was instructed that there were things in the world that were wrong and that the solution was to become a better person, which could be accomplished by working with others in the group. Molko Dep. 204-205. He was "perplexed," not bored, even though within two days the lectures started to repeat. Molko Dep. 157, 179. Molko found that he was always "very tired" and ready to go to sleep. Molko Dep. 142-143.

At one of the indoctrination camps, after almost everyone else had gone to sleep, Molko was in the bathroom talking with another recruit about leaving the camp. A Church member forcibly disrupted their conversation by violently grabbing the other person and rushing him out of the bathroom so that he and Molko no longer could freely converse between themselves. Molko Dep. 189-194.

2. For the purposes of this brief's discussion in opposition, Molko sued the Unification Church for fraud, intentional infliction of emotional distress and restitution. Molko's fraud claim has two general parts. First, he contends that "specified members of the Unification Church knowingly misrepresented the Church's identity with the intent to induce [him] to associate with and ultimately join the Church." App. 12a. Second, Molko contends "that by the time the Church disclosed its true identity [to him], the Church's agents had rendered [him] incapable of deciding not to join the Church, by subjecting [him], without [his] knowledge or consent, to an intense program of coercive persuasion or mind control. [Footnote

omitted.] [He contends], in other words, that the Church deceived [him] into a setting in which [he] could be 'brainwashed,' and that the Church could not then 'cure' the [initial] deception by telling [him] the truth after [his] involuntary indoctrination had been accomplished." App. 13a.

Molko's cause of action for intentional infliction of emotional distress was based upon the same general course of conduct of the Unification Church as was his fraud claim. That is, that the "misrepresentation and concealment of the Church's identity for the purpose of inducing [him] to submit unknowingly to coercive persuasion" was extreme and outrageous. App. 29a, 32a-33a. Moreover, because "the Church's continued deceptions might well be seen as conduct breaching [his] trust in the integrity of those who were promising to make [his] life more meaningful . . . [this] might well constitute an abuse of 'a relation or position which gives [the Church] power to damage [Molko's] interest.' [Citation.]" App. 33a.

Molko's cause of action for restitution "arises directly out of his fraud theory: he asserts that the Church deceived him into unknowingly submitting to coercive persuasion, thereby obtaining undue influence over him which it later used to extract the gift" of $6,000. App. 34a. Since undue influence is " 'that kind of influence or supremacy of one mind over another by which that other is prevented from acting according to his own wish or judgment [Citation],' it occurs when 'one party uses [its] dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which he otherwise would not have consented. [Citation.]' " App. 35a.

REASONS THE WRIT SHOULD BE DENIED

The Supreme Court of California has scrutinized this issue in a manner which is consistent with the prior decisions of this Court and those of many lower federal and state courts. It is limited to its facts, that is, the use of deceit to cause one to unknowingly submit to coercive persuasion and is not conduct which the First Amendment was designed to protect. Since no other religious organizations employ deception as a means of recruiting new members, App. 8a, religious organizations, in general, have nothing to fear with respect to engaging in open and candid proselytizing activities. Thus, the California Supreme Court's decision is easily limited to the facts to which it applies.

As deceit is a facet of fraud, coercive persuasion is a facet of undue influence. Courts have long recognized that the claimed practice of religion constitutes no privilege either to practice deceit or to unduly influence those who have placed their trust in the integrity of their freely chosen religion. *A fortiori*, when a religion is not chosen freely and voluntarily, the First Amendment should not shield the Church from responsibility for its excesses.

1. There is nothing new either about fraud or about undue influence. There is nothing new about the joint operation of both upon an unsuspecting victim. There is even nothing new about the perpetration of both fraud and undue influence within a context claimed to be religious. What *is* new about the facts in this case is the psychological technology developed in the 1950s by the Communist Chinese, and used by the Church, known as coercive persuasion. It is unusual to use deceit to cause

an individual to unknowingly place himself in an isolated and controlled setting. It is unusual to, in the absence of his knowledge or consent, to then expose that individual to such coercive persuasion. Coercive persuasion is much more than emotionally compelling speech. It involves the implementation of specific and identifiable techniques.

Since Molko was deceived into subjecting himself, without his knowledge or consent, to coercive persuasion, and where the result of such circumstance was the Church's *exploitation of him for labor and money*, a traditional cause of action for fraud has been alleged. Common law fraud "includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or *by which an undue and unconscientious advantage is taken of another.* [Emphasis added.]" *SEC v. Capital Gains Research Bureau* 375 U.S. 180, 194 (1963). Over the centuries, human deviousness has continually illustrated its facility for taking undue and unconscientious advantage over others. Such facility has not been limited to damages which are merely out-of-pocket.

The fact that the initial fraud was developed further by the imposition of undue influence makes it more, not less, fraudulent. Undue influence describes persuasion that is in nature so coercive that "it overcomes the will without convincing the judgment. [Citation.] The hallmark of such persuasion is high pressure which works upon the mental, moral or emotional weakness to such an extent . . . that a person's will may be overborne without misrepresentation." (*Odorizzi v. Bloomfield School District* 246 Cal.App.2d 123, 130, 54 Cal.Rptr. 533, 539 (1966).)

There is no constitutional "immunity" from common law causes of action alleging tortious activity. *Van Schaick v. Church of Scientology of California* 535 F.Supp. 1125, 1134-1135 (1982); *In Re The Bible Speaks* 73 B.R. 848 (Bkrtcy.D.Mass. 1987); *Nelson v. Dodge* 68 A.2d 251 (1949).

Since the aftermath of coercive persuasion not only includes the loss of labor and money, but also can include the development of "serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation and suicide," App. 26a, fraudulent conduct which leads to such consequences traditionally is actionable.

2. The decision below is consistent with the decisions of this Court and lower courts in applying both the Free Exercise Clause and Establishment Clause. To decide in any other way would allow religion to trample upon the rights of citizens to Freedom of Thought and Freedom of Choice when it comes to matters which purport to be religious. Were the California Supreme Court to have ruled otherwise, it would have denied Molko's rights to the Free Exercise of Religion, Freedom of Association, Freedom of Speech, Privacy as well as his right not to be the subject of an Establishment of Religion.

In *United States v. Ballard* 322 U.S. 78, 86 (1944) this Court recognized that " . . . Freedom of thought, which includes freedom of religious belief, is basic in a society of free men." See also *Palko v. State of Connecticut* 302 U.S. 319, 326-327 (1937) [" . . . freedom of thought and freedom of speech. Of that freedom one may say that it is the matrix, the indispensible condition, of nearly every other form of freedom."] Since coercive persuasion causes "a severe impairment of autonomy and [of] the ability to

think independently," App. 14a, it eviscerates freedom of thought. When sectarian involvement is caused by deception and coercion, it cannot, by definition, constitute the *free* exercise of religion because "[f]undamental to the conception of religious liberty protected by the Religion Clauses is the idea that religious beliefs are a matter of *voluntary choice* by individuals and their associations . . . [Emphasis added.]" *McDaniel v. Paty* 435 U.S. 618, 640 (1978) (plurality opinion). Since very few religions employ ordinary deceit to lead to brainwashing techniques in order to ensnare "converts," very little, if any, threat is posed toward honest and truthful methods which seek "to proselytize and convert others to the beliefs and practices of a religion." Pet. 16.

The Unification Church failed to advise Molko of the truth of its treatment of him because of a belief in "Heavenly Deception." According to Molko, that "doctrine holds, in essence, that it is acceptable to lie to someone in order to give him an opportunity to hear Reverend Moon's teachings. [Footnote omitted]." App. 21a.

Although the right to hold such a belief is absolutely protected, the right to act upon it is not. *Cantwell v. Connecticut* 310 U.S. 296, 303 (1940). Thus, a fraud action may be maintained where fraud implicates conduct, even if it is religiously motivated. *Sherbert v. Verner* 374 U.S. 398, 402-403 (1963).

The conduct at issue here is the use of fraud to cause an unknowing submission to brainwashing. Both fraud and brainwashing are specific conduct. To determine whether or not the Church lied to and brainwashed Molko would require as much a determination of the

truth or validity of the tenets of the Church as a determination would have been required on the truth or validity of communism in order to determine that a Chinese intellectual had been brainwashed. Thus, there is no improper or unconstitutional implication of the beliefs of the Unification Church.

Nonetheless, the imposition of liability does burden the free exercise of the Unification Church's religion. "While such liability does not impair the Church's right to believe in recruiting through deception, its very purpose is to discourage the Church from putting such belief into practice by subjecting the Church to possible monetary loss for doing so. Further, liability presumably impairs the Church's ability to convert nonbelievers, because some potential members who would have been recruited by deception will choose not to associate with the Church when they are told its true identity." App. 25a.

Although the burdens are real, they are not substantial. "Being subject to liability for fraud does not in any way or degree prevent or inhibit Church members from operating their religious communities, worshipping as they see fit, freely associating with one another, selling or distributing literature, proselytizing on the street, soliciting funds, or generally spreading Reverend Moon's message among the population. . . . At most, it potentially closes one questionable avenue for bringing new members into the Church." App. 25a.

Next, the State must identify the interests which justify such a marginal imposition on the Unification Church. "Not all burdens on religion are unconstitutional. [Citation.] The state may justify a limitation on

religious liberty by showing that it is essential to accomplish an overriding governmental interest." *United States v. Lee* 455 U.S. 252, 257-258 (1982). The California Supreme Court found that the Unification Church's alleged conduct constituted a "substantial threat to public safety, peace [and] order" because "when a person is subjected to coercive persuasion without his knowledge or consent . . . [he may] develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation, and suicide." See Committee on Foreign Affairs, U.S. House of Representatives Staff Report, *The Assassination of Representative Leo J. Ryan and the Jonestown, Guyana Tragedy* (1979).[5] Additionally, the court found a compelling interest "in protecting the family institution [Citations] [s]ince the family almost invariably suffers great stress and sometimes significant financial loss when one of its members is unknowingly subjected to coercive persuasion." App. 25a-26a.

Moreover, while not expressly reached by the court, the State has an interest in the freedoms of thought, choice and speech of its citizens which is recognized in its statutes and case law and which is basic to our democratic institutions. As has been long recognized by this Court,

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[5] This Court has held that the State "has a significant interest in protecting its citizens from abusive practices in the [Unification Church's] solicitation of funds for charity." *Larson v. Valente* 456 U.S. 228, 245 (1982). *A fortiori*, the State has an interest in protecting citizens from abusive and "deceptive recruitment practices." App. 26a.

> "Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed the *freedom to think as you will and to speak as you think* are means indispensible to the discovery and spread of . . . truth. . . .[Emphasis added.]"

Whitney v. California 274 U.S. 357, 375 (1927). One commentator put the point this way:

> "But it is not just the search for political truth for which freedom of speech is a necessary condition. The search for all forms of 'truth,' which is to say the search for all aspects of knowledge and the formulation of enlightened opinion on all subjects is dependent upon *open channels of communication*. Unless one is exposed to all the data on a given subject it is not possible to make an informed judgment as to which 'facts' and which views deserve to be accepted. When any governmental body, be it a legislative body, a censorship board, the police department or a court of law, decides that the public should not have access to some of the data on any given topic because the communication of such data will prove injurious in some manner, to that extent the public's ability to make an *informed judgment* on such topic is crippled by a distortion of the data before it." [Emphasis added.]

M.B. Nimmer, *Freedom of Speech: A Treatise on the First Amendment*, §1.02[A]pp. 1-7 Matthew Bender (1984).

Finally, the State has a constitutional duty to refrain from the establishment of religion. The State, through its courts, is the ultimate repository of power. *Marbury v.*

Madison 5 U.S. (1 Cranch) 137 (1803). The California Supreme Court has long held that religions

> "are [not necessarily] specially privileged groups, free of regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty."

Gospel Army v. Los Angeles 27 Cal.2d 232, 163 P.2d 704, 712 (1945). This Court has recognized a related concept in affirming that the "absolute protection afforded belief by the First Amendment suggests that a court should be cautious in expanding the scope of that protection since to do so might leave government powerless to vindicate compelling state interests." *McDaniel v. Paty, supra,* 435 U.S. at 627.

Were the Unification Church allowed to lie to people so that it could brainwash them without their knowledge or consent, the decision to religiously affiliate would be withdrawn from the citizen and placed into the hands of the Unification Church. Such would be allowing religion to go too far. It would sanction the intrusion by religion into the citizen's equal and coextensive right to make voluntary decisions whether he wanted to religiously affiliate or not, and specifically, whether he wanted to affiliate with the Unification Church. The decision of the California Supreme Court is consistent with this principle and should be upheld.

Brainwashing is a word which describes a process utilized by the Unification Church to fraudulently coerce

and alter the course of peoples' lives. Rather than, as petitioners suggest, a "euphemism" for speech, brainwashing is a powerful tool used to alter the psyche and actions of the victim for petitioner's power and gain.

Thus, the State has multiple compelling interests which justify the imposition of a restriction upon the Unification Church's practices of deception and coercive persuasion. The decision to convert belongs neither to the Church nor to the State. It *belongs to the individual citizen*. Thus, a requirement that Churches forego deceptive and coercive recruiting means merely that Churches not use such methods to obtain membership. It does not mean that the State decides what is good practice and bad practice in the realm of religion. It simply means that the Church will respect the citizen's constitutional right to freely exercise constitutional, including religious, choices, including the choice to affiliate with religion at all.

Such brainwashing techniques being used in a religious environment, or under the guise of religion, must be examined.

There is no less restrictive alternative available than to allow a private cause of action sounding in tort. To criminalize brainwashing, allow involuntary deprogramming of individuals or require proselytizers to obtain informed consent prior to attempting to obtain a conversion are all more restrictive than allowing "passive liability for fraud." App. 27a. Thus, "it appears that to allow injured parties to bring private actions for fraud is the least restrictive means available for advancing the state's interest in protecting individuals and families from the harmful effects of recruitment." App. 27a-28a.

3. "The free exercise clause protects religious beliefs absolutely. (*Cantwell v. Connecticut, supra*, 310 U.S. at pp. 303-304.) While a court may inquire into the sincerity of a person's religious beliefs, it may not judge the truth or falsity of those beliefs. (*United States v. Ballard*, (1944) 322 U.S. 78, 86-88.) . . . However, while religious belief is absolutely protected, religiously motivated conduct is not. (*Sherbert v. Verner* 374 U.S. 398, 402-403.)" App. 18a-19a. As it was not necessary to determine the truth or validity of communism in order to ascertain whether a prisoner of war had been brainwashed, likewise it is not necessary to determine the truth or validity of the Unification Church ideology in order to ascertain whether Molko's affiliation was obtained by deceptive recruiting practices, including an unsuspecting exposure to coercive persuasion. Thus, an inquiry can be made into the conduct of the Church's alleged use of deception and coercion without testing the validity of the ideology thereby delivered.

The trial court and court of appeal improperly and heavily relied upon *Katz v. Superior Court* 73 Cal.App.3d 952 (1977) for the proposition that "it would be impossible to consider Molko's . . . theory 'without questioning the authenticity and force of the Unification Church's religious teachings and permitting as jury to do likewise, which is constitutionally forbidden." App. 22a. Although *Katz* "involved allegations of brainwashing against the Unification Church . . . [it did not involve] former Church members but parents of current Church members." App. 22a. The parents wanted to be appointed conservators of their children for the purpose of accomplishing their

involuntary deprogramming so as to terminate their association with the Church. After the trial court granted the conservatorship orders in favor of the parents, the court of appeal reversed. It held that the "processes of the state could not 'be used to deprive the believer of his freedom of action and to subject him to involuntary treatment' (73 Cal.App.3d at pp. 988-989.) The court declared the conservatorship orders violated the Church members' free exercise rights because the orders were based on a judgment regarding the truth or falsity of their beliefs. (*Id.* at p. 987.)" App. 23a. However, the reasoning of *Katz* is not properly applicable to Molko's circumstances. In this regard, California Supreme Court stated:

> "The conservatorship orders, if allowed to stand, would have directly and severely burdened the Church members' absolute right to believe in the teachings of the Unification Church. Not only would the orders have allowed the parents to remove their adult children from the religious community they claimed to desire; the orders would have further allowed the parents to subject those individuals, against their will, to a program specifically intended to eradicate their current religious beliefs. . . . [¶] In sharp contrast, liability for fraud in the case at bar would burden no one's right to believe and no one's right to remain part of his religious community, nor would it subject anyone to involuntary deprogramming: the plaintiffs here are former Church members themselves. It might, of course, somewhat burden the Church's efforts to recruit new members by deceptive means. [¶] The *Katz* court also faced a legal question markedly different from that now posed: it considered whether a court could determine if an asserted religious conversion 'was induced by faith or by coercive persuasion.' (*Katz v. Superior Court, supra,* 73 Cal.App.3d at p. 987.) In other words, the *Katz* court had to decide whether a court could 'question the

> validity' of a person's stated faith because someone *else* claimed the person was brainwashed. [¶] Again in contrast, the legal question here does *not* require a court to determine whether anyone's faith, current *or* past, is or was real. As stated above, Molko . . . [does] not question the Church's beliefs. Neither [does he] challenge the 'validity' of [his] former faith; [he states] quite plainly that [his] erstwhile beliefs in the Unification Church were sincere. The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion. [¶] The Court of Appeal held that although *Katz* was different in certain ways, its analysis compelled the conclusion that to consider plaintiffs' fraud claims would require 'questioning the authenticity and force' of the Church's teachings. We disagree. The challenge here, as we have stated, is not to the Church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. That practice is not itself belief – it is conduct 'subject to regulation for the protection of society.' (*Cantwell v. Connecticut, supra,* 310 U.S. at p. 304.)" App. 23a-24a.

Based on the foregoing reasoning, it is clear that the decision of the California Supreme Court is consistent with the long line of cases decided by this Court which stand for the proposition that under certain circumstances, such as those here, the State may impose restrictions upon what is claimed to be the practice of religion. The employment of deceit to cause the implementation of coercive persuasion is simply not the type of conduct that the Free Exercise Clause was designed to protect. The

First Amendment protects freedom. It does not license deceit and coercion.

4. Since the course of conduct employed by the Unification Church in fraudulently inducing Molko to unknowingly submit to brainwashing can be a basis for the imposition of tort liability, *a fortiori,* so can causes of action based upon the intentional infliction of emotional distress and restitution.

There is a clear question of fact whether it is outrageous conduct for the Unification Church to have allegedly lied to Molko to gain his trust in order to make him vulnerable to the imposition of Communist Chinese brainwashing techniques. Thus, it is a question for the determination of a jury.

Likewise, there is a question of fact whether such a course of deceptive and coercive conduct also constituted undue influence such that the Unification Church should return the money it allegedly improperly obtained from Molko.

The conduct of the Unification Church as discussed herein provides the basis for three causes of action, each one of which should be determined by a jury.

5. The prohibition of deception as a means of inducing unknowing submission to coercive persuasion is not a rule that will stifle the practice of religion by the Unification Church or by other religions, whether they be newer or older. It is conduct that is clearly identifiable such that, provided that it is not employed, will not threaten "the day-to-day activities of virtually all religions." Pet. 23.

Coercion has been chronicled as including: "trickery; isolation from friends, family, transportation or other sources of food, clothing, shelter, clothing or jobs . . . disorienting the victims by placing them in an unfamiliar environment, barraging them with orders, . . . controlling every detail of their lives; and weakening the victims . . . by lack of food, sleep, or proper medical care. [Citations.] One presumes these methods of coercion would not reappear with such depressing regularity if they were ineffective. [Footnote omitted.]" *United States v. Kozminski* 487 U.S. ___, 101 L.Ed.2d 788, 814, 108 S.Ct. ___ (1988) (J. Brennan, concurring.)

What is most salutary with respect to the decision of the California Supreme Court is that "[a]t most, it potentially closes one questionable avenue for bringing new members into the Church." App. 25a. Churches are accorded extraordinary rights and privileges which are not given to their secular brethren. Churches should not be allowed to abuse the extraordinary rights and privileges accorded to them as a means of violating the First Amendment rights enjoyed by the secular citizenry. For a church to employ deceit in order to impose sectarianism through the implementation of Chinese Communist brainwashing techniques makes a mockery of the First Amendment.

There are clearly identifiable distinctions, factually and legally, between behavior which is legitimate and that which is abusive. These distinctions could be no more carefully applied to this case than has already been done by the California Supreme Court. Its decision must be upheld. To do otherwise would tragically condone

deception and coercion in the name of religion and would ironically endorse the subjugation of American citizens by the very same techniques which subjugated the nation of China to Communist ideology.

Accordingly, the Court should deny the petition because the issues of the case were fully and correctly considered in the California Supreme Court, which properly balanced the interest of the Church with the interest of the State in accordance with a long line of authority issuing from this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FORD GREENE
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960
(415) 258-0360

Counsel for Respondent, David Molko

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No. 88-1600

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY AND NEW EDUCATION DEVELOPMENT SYSTEMS, INC.,
Petitioners,

v.

DAVID MOLKO AND TRACY LEAL,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

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REPLY BRIEF OF PETITIONERS

JEFFREY S. ROSS
FRIEDMAN, SLOAN
& ROSS, P.C.
1 Maritime Plaza
San Francisco, CA 94111
(415) 788-2200

LAWRENCE A. GIBBS
671 Vincente Street
Berkeley, CA 94707
(415) 528-1078

REX E. LEE *
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-1000

Counsel for Petitioners

* Counsel of Record

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REPLY BRIEF OF PETITIONERS

Respondents cannot seriously dispute that the decision below resolves an issue of fundamental importance to the religious community in a way that is inconsistent with prior decisions of this Court and with the decisions of several lower state and federal courts. Rather than addressing the question presented, respondents have provided this Court with a preview of their closing argument to the jury, invoking the memory of Charles Manson, Jonestown (Leal Opp. 11), and "Chinese Communist" labor camps. Molko Opp. 6-7. The respondents' Briefs in Opposition make clear one central point: this is not a case about "fraud" or any other common law tort. Instead, as respondents' arguments clearly illustrate, this case involves a direct attack on a process of reli-

gious conversion or change of belief, which respondents have now conceded involved no force, threats of force or other tortious conduct. Molko Opp. 6 (challenged conduct "does not include the use of force [or] threat of force"). Regardless of the terminology used to describe the facts at issue, respondents' claims—as sanctioned by the court below—essentially give rise to a new tort, useful primarily to attack minority religions and their beliefs but with extremely broad implications for common law and First Amendment doctrines. As such, the holding below warrants review by this Court.

1. Respondents concede that the decision below "does burden the free exercise of the Unification Church's religion." Molko Opp. 16. See Leal Opp. 8. In fact, the potential liability of petitioners in this case is based *entirely* on protected religious conduct and belief, *i.e.*, proselyting and religious conversion. Pet. 16-17.[1] See Molko Opp. 7-8; Leal Opp. 1. Respondents nevertheless attempt to belittle this burden by suggesting that the decision below will affect only the Unification Church. Of course, that infringement alone would raise a significant First Amendment issue. However, what makes the issue particularly worthy of the Court's attention is the substantial burden that the decision below places on all religious proselyting. The extent of that burden was succinctly stated by the *Amici* Brief of the National Council of Churches of Christ and other religious groups:

> the ruling below creates a *new* tort of "coercive persuasion" pursuant to which liability can be imposed on a church solely on the basis of a court's subjec-

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[1] Respondents concede that they will be seeking to recover damages, *inter alia*, for being "induced to join the Unification Church . . . ." Leal Opp. 6 n.3. Contrary to respondents' simplistic assertions, however, there is no way for a jury or other factfinder to isolate church beliefs from church practices in the context of a religious conversion or induction into any religious organization. Pet. 21-22; Brief *Amici Curiae* of NCC, at 14-15.

> tive determination of the propriety of religious messages. The ruling below does not narrowly proscribe deceit; it subjects *all proselyting by all churches* to regulation and involves the courts in examining the validity of religious conversions.

Brief of the National Council of Churches of Christ in the U.S.A. ("NCC"), *et al.*, as *Amici Curiae* in Support of Petitioners, at 7 (emphasis added).

The substantial impact of this new tort doctrine on both mainstream and minority religious organizations cannot be avoided by the simplistic edict "don't commit fraud." A disgruntled former member of any church can, according to the California Supreme Court, readily put the church to the burden of trial simply by *alleging* that some member of the church either misstated *or* failed to disclose some material fact about the church's teachings, leadership or doctrines. Under the decision below, any allegation of material misrepresentation or nondisclosure is sufficient to subject the church's beliefs and conduct to searching courtroom inquiry to determine if "coercive persuasion" occurred, thereby providing virtually every apostate church member with a ticket for admission to court.[2]

2. The validity of this undisputed burden on the free exercise and free speech rights of religious groups turns

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[2] The impact of the decision below on established religious belief and practice is starkly illustrated by the treatment of Molko's claim for restitution of a donation he made months after he joined the Church. Although Molko admits that he made the donation with the sincere belief that he should "give [this] money to God" (and there is no allegation of fraud in the circumstances surrounding the donation), the decision permits an award of restitution based on the allegation of "brainwashing" in Molko's earliest contacts with the Church. Under such a doctrine, any donation to any church is subject to revocation based not on fraud or any other recognized tort—or even on the circumstances of the gift—but on the theory that the disgruntled member's contacts with the church were psychologically "coercive."

entirely on the state's interest in preventing exposure to "coercive persuasion" or "brainwashing." See Pet. 17-18. "Despite the psychological label, 'coercive persuasion' is merely a euphemism for 'speech' and related religious activity." Pet. 18; see Pet. 18-19, 22-26. The *Amici* Brief filed by the Society for the Scientific Study of Religion ("SSSR"), *et al.* states that the pseudo-scientific theory of "brainwashing" reflects nothing more than a "negative value judgment about the beliefs and practices of the Unification Church." Brief *Amici Curiae* of SSSR, at 19. The SSSR *Amici* conclude that

> the allegation of "coercive persuasion" at issue in this case has no scientific validity and has not been accepted by the relevant professional and scientific communities. It thus provides no basis for subjecting religious organizations to tort liability for conversion practices.

Brief *Amici Curiae* of SSSR, at 4.

Assuming *arguendo* that it could be proven, as a matter of "psychological theory," that individual religious beliefs could be more readily changed by certain types of particularly persuasive speech, the state interest in protecting citizens from "overly persuasive" speech does not provide a compelling interest that justifies a jury inquiry into the legitimacy of petitioners' proselyting and respondents' religious conversion. Pet. 16-19; *cf. NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982). Yet, this is just what the court below held, *viz.*, that the State of California has a compelling interest in preventing individuals from being persuaded (by non-threatening speech) to convert to a new religion. This incredible intrusion into the free exercise of religion warrants review by this Court.[3]

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[3] The compelling state interest analysis below is disturbing for two additional reasons. First, the court's conclusion that there is a compelling state interest implicated here is based on no valid

3. The petition is not, as respondents suggest, a plea for "immunity" from tort liability. Petitioners always have conceded that respondents should be permitted to recover for any common law tort committed by petitioners, including fraud. See Pet. 13 n.18.[4] However, damages for fraud or other tortious conduct should be applied to petitioners consistent with common law standards. *Id.* What the court below permits—and what petitioners and their *amici* ask this Court to review—is the respondents' *expansion* of existing tort law to recover damages that "proximately result" from being "induced" to change their religious beliefs and "join the Unification Church." Molko Complaint, ¶ 15; see Pet. 13-14. Those damages *are not based on fraud or any other common law tort.* See Pet. 12-16, n.18, n.19.[5] Rather, the

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scientific evidence. There is no evidence that "brainwashing," as described by respondents, is possible outside of a setting of captivity. *See* Brief *Amici Curiae* of SSSR, at 7-20. In the absence of any evidence or support for the asserted state interest, such an interest surely cannot be deemed "compelling" in light of the core First Amendment activities at stake. Second, no state legislature has ever enacted legislation condemning either the type of proselyting efforts at issue or, more generally, the conduct labelled "coercive persuasion" or "brainwashing." Thus, the political branch of government has not found that any interest exists to warrant even attempting to regulate petitioners' so-called "illegal" (Molko Opp. 3) "coercive practices." While the absence of state legislation may not be a per se basis for holding that there is no compelling state interest involved here, it is a strong indication that casts serious doubt on the judgment of the California Supreme Court.

[4] The existence of "fraud" is, of course, *assumed* for purposes of this petition. *See* Pet. 5 n.5. Statements by respondents that petitioners have "admitted" to fraud or other tortious conduct (Molko Opp. 3, 5 n.4) constitute a flat misrepresentation of the record.

[5] It is undisputed that the only fraudulent misstatement or omission alleged by respondents was the failure to disclose petitioners' identity as "Moonies." *Cf.* Matthew 26:69-75. This alleged misrepresentation (or failure to provide a sectarian "Miranda warning") was cured by the time that respondents' conversion (and their alleged "damages") occurred. *See* Molko Pet. 10. (Respondents

right to recover such damages depends entirely on acceptance of the respondents' "brainwashing" theory as a basis of Church liability. Pet. 14 n.19. Both respondents essentially concede as much. Leal Opp. 6; Molko Opp. 12-13.

Putting aside allegations of "brainwashing," respondents also have conceded that they were not "harmed" in the course of their conversion. See Molko Opp. 6; Leal Opp. 1. Respondents were *never* physically restrained, threatened, held captive, or deprived in any way, except in the course of departure from the Church (*i.e.*, their abduction and "deprogramming").[6] Thus respondents' statements that this is a routine tort case are entirely hollow. This is a novel, but unfortunately not unprecedented, form of tort action—it is a lawsuit, sanctioned by the California Supreme Court, in which former members of a religion will challenge the validity of their religious conversion and seek damages for that conversion. See Brief *Amici Curiae* of NCC, at 7-9.

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never have contested that they were fully informed of the identity of petitioners at the time they joined the Church. Pet. 4-5. Nevertheless, if the decision below is not reversed, petitioners will be entitled to—and intend to—seek damages arising from their religious conversion. Pet. 11-12; Leal Opp. 6 & n.3.

[6] In this regard, it is significant that respondents rely on the fact that "brainwashing" is mentioned in the psychological diagnostic manual to prove that such a phenomenon exists. That manual refers to "brainwashing, thought reform, and indoctrination while the *captive* of terrorists or cultists." Leal Opp. 10 (emphasis added). But, any suggestion that respondents were "captives" is ludicrous; as the court below noted, both respondents were "free to depart at any time" and one respondent "commuted to a bar review course" during the period in question. *See* Pet. 7 n.8. Thus, repeated allusions to Chinese Communist labor camps and "prisoners of war" (*see* Molko Opp. 6-7) are equally inapposite and, at bottom, ridiculous. With respect to the degree of psychological pressure and "coerciveness," respondents were no more captives—and, in a sense, they were less "captive"—than the average first year law student. *See* Pet. 22 n.25; 24-25 n.33.

4. At bottom, it is clear that the respondents' theory of non-violent—even "voluntary"— brainwashing lies at the heart of this case. Respondent Molko even asserts, without citation, that "brainwashing" itself is both actionable and "illegal." Molko Opp. 3. Putting aside all issues as to the fraud claim, both respondents also claim that they should recover damages (under the rubric for intentional infliction of emotional distress) based *solely* on the conduct that they have characterized as "brainwashing." Molko Opp. 11; Leal Opp. 2.

Thus, the only basis for allowing respondents to go forward to trial on their claims rests on acceptance of their argument that non-violent and non-threatening religious proselyting can be held to be wrongful conduct—"brainwashing"— that gives rise to damages in the context of a religious conversion. See Pet. 10-12, 14-15. In this regard, it is noteworthy that, even at this late date, respondents cannot agree on a definition of what constitutes "brainwashing." According to respondent Molko, it consists of such "nefarious techniques" (Molko Opp. 7) as (1) inducing "emotional arousal"; (2) "immers[ing]" persons in a "social milieu" that "consistently and uniformly" represents a certain viewpoint; and (3) engaging in "interrogation" that includes "self-criticism," "rote learning" and "group discussion." Molko Opp. 6-7. Respondent Leal focuses on (1) "deprivation" of "outside information"; (2) "preventing" "opportunity to reflect"; (3) "concocted struggle and confession"; and (4) "discouraging any questioning by the recruit." Leal Opp. 1. It is difficult to imagine a more direct affront to religious liberty than to subject a church to a trial of its beliefs and practices on such vague and ill-defined criteria. See Pet. 22-26; *cf.* Pet. App. 137-151 (various statements of "brainwashing" theory by respondents' experts).

Ultimately, the one issue on which both petitioners and respondents agree (Pet. 21-23; Leal Opp. 8-10;

Molko Opp. 21-23) is that theories of liability based on religious "brainwashing" have been accepted in some courts and rejected in others. Thus, there is no question that this case presents a conflict on an important and recurring constitutional question that involves a significant threat to religious liberty—not only to minority or controversial religious groups, but to every religion that engages in proselyting and conversion.[7] See Brief *Amici Curiae* of NCC. This Court should grant the petition and resolve the conflict among the lower courts concerning the proper balance to be struck between the protection of religious proselyting and conversion and the state's interest, if any, in protecting its citizens from psychologically "coercive" speech.

CONCLUSION

For the foregoing reasons and those presented in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JEFFREY S. ROSS
FRIEDMAN, SLOAN
& ROSS, P.C.
1 Maritime Plaza
San Francisco, CA 94111
(415) 788-2200

LAWRENCE A. GIBBS
671 Vincente Street
Berkeley, CA 94707
(415) 528-1078

REX E. LEE *
CARTER G. PHILLIPS
MARK D. HOPSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 429-1000

Counsel for Petitioners

May 10, 1989

* Counsel of Record

[7] Moreover, respondents have not challenged the court of appeal's conclusion that the "facts regarding the occurrences giving rise to this lawsuit are essentially undisputed." Pet. 7 n.10.